

1 COURT OF COMMON PLEAS

2 HAMILTON COUNTY, OHIO

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4 STATE OF OHIO, :

5 Plaintiff. :

6 vs. :Case Number B1003262

7 RUBEN JORDAN, :Appeal Number C1100833

8 Defendant. :Volume VIII of X

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10 - - -

11 TRANSCRIPT OF PROCEEDINGS

12 - - -

13 APPEARANCES:

14 Seth S. Tieger, Esq.

Megan E. Shanahan, Esq.

15 On behalf of the State of Ohio.

16 William P. Whalen, Jr., Esq.

Amy R. Williams, Esq.

17 On behalf of the Defendant.

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19
20 BE IT REMEMBERED that upon the Jury

21 Trial of this cause, on January 21, 2011, before

22 the Honorable NADINE L. ALLEN, a judge of the

23 said court, the following proceedings were had,

24 to wit:

25

1 DETECTIVE JENNY LUKE

2 Direct ExaminationPage 724, Line 4
3 Cross-ExaminationPage 753, Line 7
4 Redirect ExaminationPage 785, Line 15
5 Recross-ExaminationPage 788, Line 7

6 LESHUANDE RAMSEY

7 Direct ExaminationPage 816, Line 11
8 Cross-ExaminationPage 820, Line 4
9 Redirect ExaminationPage 839, Line 21

10 DETECTIVE KURT BALLMAN

11 Direct ExaminationPage 841, Line 10
12 Cross-ExaminationPage 847, Line 9
13 Redirect ExaminationPage 854, Line 20

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1 PROCEEDINGS, January 21st, 2010

2 THE COURT: All right. Good
3 morning, everybody, have a seat. I think
4 we are ready now for the jury to come in.
5 Counsels?

6 MR. WHALEN: Yes.

7 MS. SHANAHAN: Yes.

8 THE COURT: And you have your first
9 witness you're ready to call?

10 MS. SHANAHAN: We are, yes.
11 Thanks, Judge.

12 THE COURT: Okay.

13 MR. BRENNER: All rise for the
14 jury.

15 (The jury entering the courtroom at
16 9:25 a.m.)

17 THE COURT: You may be seated. And
18 good morning, everyone. We are ready to
19 resume. I think the State has another
20 witness to call at this time.

21 MS. SHANAHAN: We do, Your Honor.
22 State would call Detective Jenny Luke.

23 THE COURT: Step forward and raise
24 your right hand to be sworn.

25

1 DETECTIVE JENNY LUKE,
2 having been first duly sworn, was examined and
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MS. SHANAHAN:

6 Q. Detective, could you please state
7 and spell your last name for the record?

8 A. Jennifer Luke, L-U-K-E.

9 Q. How are you employed, Detective?

10 A. Cincinnati Police Department
11 assigned to the Homicide Unit.

12 Q. How long have you been with the
13 City of Cincinnati's Police Department?

14 A. Seventeen years.

15 Q. Did you start out in the Homicide
16 Unit?

17 A. No, I started out in District 1,
18 went to District 3, went to the Vice Unit, and
19 then I was based out of Columbus in an
20 undercover task force, and then I went to
21 homicide.

22 Q. And how long have you been in
23 homicide?

24 A. Starting my 11th year. In my 11th
25 year.

1 Q. You started in homicide in your
2 11th year?

3 A. No, I started in homicide in my
4 sixth and seventh year.

5 Q. Okay. So you are now in your 11th
6 year in homicide?

7 A. Correct.

8 Q. Okay. During the time that you
9 have been in homicide, approximately -- I know
10 it's hard to estimate, approximately how many
11 murders have you investigated?

12 A. I would say probably 400 or so.

13 Q. Okay. Do all those cases get
14 solved?

15 A. No.

16 Q. How do the cases come to you and
17 what do you do?

18 A. They come to us -- obviously, there
19 is a phone call from our uniform personnel who
20 are first on the scene. Usually fire indicates
21 to the uniform officers that the person is
22 deceased, and there's nothing they can do for
23 them. Then our office is notified to respond
24 along with the criminalist.

25 what we do is, obviously, try to

1 solve the cases. We talk to witnesses, we look
2 at evidence, we assist the criminalist with
3 evidence, and it's just -- it's a lot of witness
4 talking to, I would say, for the most part.

5 And then, eventually, we present
6 our case to the Grand Jury.

7 Q. You go out to the actual crime
8 scenes then?

9 A. Yes.

10 Q. Is the body generally still there
11 at the crime scene?

12 A. Generally, yes.

13 Q. Okay. So you're able to see things
14 when you arrive in its natural state as it was,
15 at least when the body was found, if not when
16 the murder occurred?

17 A. Correct.

18 Q. Okay. Are there times when you
19 respond to scenes where the body has clearly
20 been dead for a period of time?

21 A. Yes.

22 Q. And there are times, obviously,
23 that you respond to scenes where this is a fresh
24 murder?

25 A. Just happened.

1 Q. Okay.

2 A. Correct.

3 Q. Were you assigned to the murder of
4 Victor Davis that occurred on October 31st of
5 2008?

6 A. Yes.

7 Q. How is it that you got this
8 particular case?

9 A. My partner, Terry McGuffey and I,
10 were on night shift that night, and, like I
11 said, before there was a call that came into
12 CIS, Criminal Investigation Section, that said
13 that we had a homicide that occurred on
14 Republic, so Terry and I responded from the
15 office to Republic Street.

16 Q. Now, was this a situation where the
17 body had been dead for some time, or was this a
18 fresh murder scene?

19 A. Fresh murder scene.

20 Q. Okay. What's the first thing that
21 you did when you arrived there on the scene?

22 A. The first thing I did, as soon as I
23 stepped out of the car, I spoke to the uniformed
24 officers and a sergeant on scene who told me
25 that everyone said this is retaliation because

1 this guy was an eyewitness to another murder. I
2 didn't know if (A) if that was true, or (B) what
3 murder they were talking about, because, like I
4 said, we have probably 60 to 80 murders a year
5 and not all of them are mine, and I don't know a
6 lot of names attached to them.

7 From there, there were -- the
8 victim's children were on scene, and I believe
9 his ex-wife. There was also some people that
10 lived in the apartment that were telling us
11 stuff out of their screens.

12 Q. I'm going to stop you there. You
13 indicated when you arrived on the scene that
14 information is coming to you from fellow
15 officers that everyone says this is in
16 retaliation for a murder?

17 A. Correct.

18 Q. Is it common that witnesses line up
19 to talk to you, Detective Luke?

20 A. No, they will do it secretly
21 usually.

22 Q. When you're there at the scene,
23 people aren't standing around willing to talk to
24 the Cincinnati Police detectives, are they?

25 A. No.

1 Q. In fact, you referenced people in
2 that apartment building talking through a
3 screen. Describe in this particular case, how
4 extreme the situation was.

5 A. Well, we had a huge crowd and
6 everybody is watching what everybody is doing
7 for fear people don't -- down in that area they
8 don't like people to talk to the police. They
9 don't know who's watching them.

10 In this instance, like I said, he,
11 Mr. Davis, was right outside of his apartment,
12 so there were people inside of that apartment
13 that were -- I don't want to say whispering,
14 they called us over to the screen so nobody
15 could see, and were telling us information. And
16 then when we walked over to the family members,
17 they were giving us information as well, as much
18 as they knew.

19 Q. Was there one in particular
20 individual inside that apartment building that
21 gave you specific orders to not even turn and
22 look at her screened window?

23 A. Absolutely. She asked me actually,
24 please don't come back, I'll be next.

25 Q. Describe that set-up, what you did

1 and how you communicated with her.

2 A. I stood at the screen and just
3 acted like I wasn't even talking to her, like I
4 was just looking at the body, and I would just
5 ask her questions and she would answer me.

6 Q. She was behind you?

7 A. Correct.

8 Q. So it didn't look like you were
9 looking in her window?

10 A. Right.

11 Q. And when you say the screen, the
12 jury was down there, this isn't a screen door,
13 these are the grates that are over the windows,
14 the protective grates?

15 A. Yeah, there is the iron bars and
16 then the screen.

17 Q. Okay. What, if anything, struck
18 you when you arrived on the scene of Victor
19 Davis's murder as far as the natural lay of the
20 land and what was around?

21 A. Obviously, Victor, himself, where
22 he was shot was very disturbing to me.

23 Q. Why is that?

24 A. Because I could see a head shot --

25 Q. Okay.

1 A. -- which is very disturbing. You
2 know, I could see that he was shot once in the
3 chest. And at that point I could only see one
4 to the head. I saw the one behind, I think it
5 was the left ear. I found out later about the
6 one to the top of the head which then,
7 obviously, was even more disturbing when I found
8 that out from the coroner.

9 I also -- about eight feet from the
10 body, there was a pretty big or large glob of
11 spit or phlegm. And for a moment I got very
12 excited, because I thought wow, this could be --
13 you know, this could be spit of the bad guy, or
14 maybe it's spit of Victor, maybe he was fighting
15 and maybe Victor spit, or maybe it was just
16 anybody that was walking through spit. When I
17 was praying that it wasn't a fireman or
18 paramedic spit, I thought let's not get excited,
19 this never works out, it's going to be a fireman
20 or paramedic that screwed up in the heat of
21 trying to work on him spit.

22 So we became very interested, me,
23 meaning me and the criminalist and my partner
24 became very interested in the spit and got kind
25 of excited about it.

1 Q. And that criminalist would be
2 Criminalist Glindmeyer?

3 A. Yes.

4 Q. Okay. What did you do then, as far
5 as your observation of the spit that there was
6 there on the scene? Did you just say, okay,
7 great, there is spit, criminalist get it? Tell
8 us exactly what you did.

9 A. No, I actually got down on my hands
10 and knees, along with my partner, and we were
11 looking at it. And I remember saying, God, this
12 is good, I'm sure it's a fireman though, we
13 can't be that lucky. And then I was looking
14 that there was nothing -- there was -- there
15 wasn't any leafs on top of it, there wasn't a
16 footprint on top of it, it hadn't been run over
17 by anything. There wasn't a bit of debris in
18 it. It was just a fresh thick frothy, I don't
19 know, phlegm or spit.

20 Q. Okay. When you say frothy, what do
21 you mean?

22 A. Like it -- like if you -- I don't
23 know, like if you hocker, for like lack of a
24 better word, and there is like little, you know,
25 there is some substance to it, like maybe little

1 bubbles, its thicker, its substancy.

2 Q. Okay. Detective Luke, in
3 preparation for your testimony today did you
4 check the National Weather Services website for
5 what the weather was on October 31st of 2008?

6 A. I did.

7 Q. And what was it?

8 A. Seventy two degrees.

9 Q. Okay. So rather warm for the end
10 of October?

11 A. I remember it being warm.

12 Q. Okay. Was anything found on Victor
13 Davis that linked him, ultimately, to the murder
14 that was referenced to you as far as him being
15 an eyewitness?

16 A. Yes. When the coroner got there,
17 we went through his belongings, and inside of
18 his wallet was the business card for homicide
19 Detective Kurt Ballman. So, obviously, at that
20 point I called Kurt at home and asked him, do
21 you know a guy by the name of Victor Davis? And
22 it was bad. I mean it was real bad. We had --
23 we had asked -- excuse me, we had begged him not
24 to go back down there. We had asked him to give
25 us three days to get him someplace to live, and

1 please do not go back downtown. And, obviously,
2 he didn't, so it was we, meaning me and Kurt,
3 and everyone felt horrible for him.

4 Q. You admit you asked him not to go
5 back to that area until you could find him a
6 safe place to go?

7 A. Yes.

8 Q. Was he resistant to that when you
9 told him you wanted to move him out of the
10 neighborhood?

11 A. Somewhat, yes and no. I mean, I
12 think he got it, but then he didn't. I mean,
13 he's from there.

14 Q. Does he have family there?

15 A. Yeah, he lived with his sister.

16 Q. Did he express concern about her?

17 A. I don't remember him expressing
18 concern about his sister too much more -- it was
19 more for himself in that he understood us, but
20 he could take it, or he wasn't going to let it
21 get him, or --

22 Q. Okay. That case, that situation
23 where he was an eyewitness was Detective
24 Ballman's case, correct?

25 A. Yes.

1 Q. Okay. So Detective Ballman had
2 more contact, independent contact with Victor
3 Davis as far as day-to-day and what was going on
4 with Victor down there in Over-the-Rhine?

5 A. On that case, yes. I had known
6 Victor previously from another homicide that he
7 was a witness on for me, so I kind of knew him,
8 but I didn't know him personally.

9 Q. Okay. What was the next thing that
10 you did then after you were there on the scene,
11 you're examining the spit, what happened next?

12 A. I spoke to his children the most
13 down there because they were, as you can
14 imagine, beside themselves, telling me their dad
15 knew this was going to happen, their dad knew
16 this was going to happen. He had his clothes
17 laid out. He told us what to bury him in. He
18 knew that the streets were gonna get him. He
19 knew that -- Victor Davis told me that Kareem
20 was making phone calls to him to try to get a
21 bootleg cab drive, and that Victor knew that
22 that might be a setup and that he wasn't going
23 to give a ride to Kareem and so he kept hanging
24 up on Kareem.

25 And that he told his -- Victor was

1 telling me on scene that you know who did it, if
2 something happens to me, you know who did it.

3 Q. Okay. And, ultimately, Kareem
4 Gilbert was charged with the murder of Victor
5 Davis, correct?

6 A. Correct.

7 Q. When did you develop a suspicion
8 that Ruben Jordan was involved in that murder of
9 Victor Davis?

10 A. Um, this is a little bit more
11 difficult for me, because I have to go back to
12 the courthouse when Kareem's case was going on.
13 I was watching Ruben at his son's hearings. I
14 was approached by his, Victor's children, in the
15 courthouse saying that they had -- that they had
16 some contact with Ruben out on the streets and
17 that they knew he was involved, the way that he
18 was acting, the way he was standing out in front
19 of their house, the way he reacted when he found
20 out that Victor Davis, Jr. was Victor's son,
21 because Victor Davis Jr. and Ruben, apparently,
22 know each other, and would like hang out, I
23 guess, or I don't know what they do, but
24 apparently they know each other from Burnet
25 possibly.

1 And that when "he -- when Ruben
2 found out that Victor Davis, Jr. was Victor's
3 kid, he was so upset and even started to cry in
4 the hallway and said how sorry he was, and that
5 threw them off, and they came to me with that.

6 Of course, that's not enough to do
7 anything with, it's just something I put in the
8 back of my head. I also, from the very
9 beginning, we thought that -- we always thought
10 that Kareem was either there or had someone do
11 this, but we just didn't know who that other
12 person was.

13 Q. Why is it that you would assume
14 that Kareem Gilbert, himself, who murdered Brian
15 Austin, wouldn't, himself, then go and murder
16 Victor Davis?

17 A. Because it's two people. I mean,
18 that's like really ballsy. I mean, just to us
19 it would be like wow, he's like a real bad like
20 killer-killer. Like I just thought that a
21 16-year-old kid, yeah, in the heat of the
22 moment, in the heat of passion with Brian
23 Austin, he did that, but I can't see him like
24 planning this. I can't see -- I just -- it was
25 just something I didn't think a 16-year-old kid

1 would cross over and do.

2 Q. Okay.

3 A. So I always thought that it was
4 somebody close to Kareem. Although, again,
5 these are, you know, like I said, hunches, and
6 then all these things came about in the
7 courtroom and with their kids.

8 And then Kenny called me and I
9 wanted to find out, you know, about Kenny Heard,
10 so I asked the detectives who you spoke to about
11 Kenny and Kenny's information. I believe -- I
12 believed Kenny. I believed everything he told
13 me. I turned -- I turned Kenny's information
14 over to Kareem's attorney right away, Mr.
15 Issenman was Kareem's attorney, and I said you
16 have to call his attorney, you have to tell him
17 what you know about Ruben.

18 Q. And did, in fact, you ultimately
19 find out that Kenneth Heard did as you
20 instructed and he did have contact with Kareem's
21 attorney?

22 A. Yes. Mr. Issenmann and Mr. Heard
23 talked.

24 Q. Okay.

25 A. Mr. Issenman said, you know, Kenny

1 called him.

2 MR. WHALEN: Objection to what Mr.
3 Issenman said, Your Honor.

4 THE COURT: Exception for this
5 comment.

6 MS. SHANAHAN: No, Your Honor.

7 Q. Detective --

8 THE COURT: Sustained.

9 Q. Thank you. Detective, you're
10 talking about Kenneth Heard, who, as you know,
11 came here to testify, you had multiple phone
12 conversations with Kenneth and there were
13 recordings of some of those phone conversations,
14 correct?

15 A. Correct.

16 Q. Okay. On February 11th of 2010,
17 did you speak to Kenneth Heard on the telephone
18 about Ruben Jordan?

19 A. Yes.

20 Q. And was that phone call taped?

21 A. Yes.

22 Q. Okay. Did you listen to the tape
23 before coming here to court today in preparation
24 for trial?

25 A. I did.

1 Q. There is an issue about the
2 transcript of that tape saying that Kenneth
3 Heard told you that the defendant was in his
4 early 20s. Did you hear that on the tape?

5 A. No. I listened to it. In fact, he
6 says early four -- he says like within and
7 F-O-R, and then I cut him off right away. He
8 says early "four," and then I say, how did you
9 learn that, or I cut him off before he could
10 finish the age and you can clearly hear that.

11 Q. So at this point all you have is
12 Victor Davis, Jr -- or Victor Davis's children
13 telling you they believe Ruben was involved.
14 You see his behavior in the courthouse yourself,
15 now you have Kenneth Heard telling you, still at
16 this point Ruben Jordan is not charged. Explain
17 that.

18 A. He's not charged because that's
19 just not enough. I mean, a lot of -- you know,
20 I have to be careful about what family members
21 are telling me because they are, obviously,
22 involved. They are, obviously, very, you know,
23 emotionally involved. But I still paid -- we
24 still paid attention to them. How Ruben was
25 acting in court, in juvenile court in the

1 hallways, Kenny Heard --

2 Q. I'm going to stop you there. You
3 interviewed also a person named Bobbi Jones
4 about Ruben Jordan's involvement in this murder,
5 correct?

6 A. I did.

7 Q. You did?

8 A. I did.

9 Q. Where is Bobbi Jones now?

10 A. Deceased.

11 Q. Okay. Bobbi Jones died of natural
12 causes, nothing to do with a case or a murder or
13 anything, correct?

14 A. Correct.

15 Q. Okay. So did that information also
16 raise your suspicion?

17 A. She was a great witness.

18 Q. Ultimately what gave you enough to
19 actually charge Ruben Jordan?

20 A. When the DNA had came back from Mr.
21 Jordan to the spit that I described at the
22 scene.

23 Q. Okay. Backing up to courthouse
24 involvement. There, you didn't have yourself a
25 swab of Ruben Jordan at that point, did you?

1 A. No, we had nothing.

2 Q. District 4 came down to the
3 courthouse to speak with Ruben Jordan about an
4 investigation that they had going on, correct?

5 A. They did.

6 Q. And did you witness the
7 conversation that Ruben Jordan had with the
8 investigator?

9 A. I was there.

10 Q. Could you tell -- just describe, as
11 the investigator is talking to Ruben Jordan, was
12 he informed of why he was being detained and
13 questioned?

14 A. Not at first.

15 Q. And what was his reaction?

16 A. Looked like he had been punched in
17 the stomach.

18 Q. Okay. Then, ultimately, when he
19 was told why he was being questioned and that it
20 had nothing to do with Victor Davis's murder,
21 what was Ruben Jordan's reaction?

22 A. He smirked, acted like he didn't
23 care and said oh, yeah, I did that.

24 Q. And then you get the CODIS hit
25 that -- you get notification from the Bureau of

1 Criminal Investigation and Identification,
2 correct, through a letter?

3 A. Right.

4 Q. Okay. And then that is not enough,
5 as far as in Hamilton County, you need a
6 confirmatory, correct?

7 A. I need to confirm what that lab
8 sheet is telling me.

9 Q. Okay. And how is it that you go
10 about then getting permission to get a swab from
11 Ruben Jordan to run a confirmatory test through
12 our lab?

13 A. I got a search warrant for his
14 buccal swab.

15 Q. And did you serve that search
16 warrant on Ruben Jordan?

17 A. I did.

18 Q. Describe that situation and how
19 that all went down.

20 A. I had to figure out where Ruben was
21 living. We did that. We, along with the
22 uniformed officer, went to Ruben's house and we
23 told him to put on his shoes, that we needed to
24 talk to him about his son's case. And we took
25 him down in a police car down to our office so a

1 criminalist could properly take his swab.

2 Q. Now, it was specifically his son's
3 alibi is what you told him you needed to
4 discuss, correct?

5 A. Correct.

6 Q. Why did you tell him that, rather
7 than going in there and saying right at his
8 house, we've gotten a CODIS hit on your DNA,
9 we're taking you downtown, we're gonna swab you
10 and we're gonna run it?

11 A. Two reasons. The first reason is
12 safety, we didn't want to do it in his house. I
13 wanted a controlled environment, and I needed a
14 criminalist to do it. Third of all -- I'm
15 sorry, second of all, I wanted to see his
16 reaction. I wanted to hear his alibi statement.
17 I knew he had filed one and I wanted to hear
18 about it. So I knew that if he would speak to
19 me about the alibi statement, I would have him
20 in the office and I could just serve the search
21 warrant.

22 Q. Okay. And when you're talking
23 about the alibi statement, he alibied Kareem is
24 what you're referencing, correct?

25 A. Correct.

1 Q. Because at this point Ruben Jordan
2 was not charged, so he didn't file an alibi for
3 himself?

4 A. Right.

5 Q. But he is an alibi witness for
6 Kareem at that point?

7 A. Correct.

8 Q. Okay. So you take him back to the
9 office and what happens?

10 A. Take him back to the office. We
11 start off the interview talking about his alibi,
12 that the reason why he's there is the alibi, and
13 he's very upset and angry with us about why
14 didn't we do this before? And I basically said
15 well, we just didn't -- we just didn't know
16 about it. Here's this piece of paper that
17 Kareem's attorney filed, we need to talk to you
18 about it, and he gave us a short statement. We
19 read him his rights, um, and he didn't want to
20 talk anymore without a lawyer so then we took
21 his swab.

22 Q. Okay. When, ultimately, you were
23 telling him that you were going to take the
24 swab, how was his reaction? What was his
25 reaction?

1 A. He got upset, said the only reason
2 that you -- the only reason you would do this is
3 because I'm a suspect. You would -- there is no
4 reason to do this except if I'm a suspect. He
5 got agitated about him being a suspect. And to
6 keep things calm we reiterated to him that
7 sometimes DNA is taken to exclude people also.
8 And I was giving him a scenario about a husband
9 and wife, an exclusion scenario.

10 Q. In the course of that conversation,
11 did you ask Ruben Jordan if he had been down on
12 Republic Street on October 31st of 2008, the day
13 of Victor Davis's murder?

14 A. Yes, I asked him if he was down
15 there that night, and he said no. I asked him
16 if he was, I think, or Detective McGuffey asked
17 him the question: Is there any reason why you
18 would be down there that day or that night, and
19 he said no, not that I know of, unless the kids'
20 mother would have asked us to come down.

21 Q. Okay. And, ultimately, did he talk
22 to you about the time -- or did you notify him
23 of the time of the murder --

24 A. Yes.

25 Q. -- of Victor Davis?

1 A. I had Victor Davis's folder out,
2 and I was tapping at it, and I said we are
3 talking about 11:30 at night. You know, it was
4 11:30 at night. And he said yes, right. And he
5 said that he was not down there then --

6 Q. Okay.

7 A. -- before or after the homicide. I
8 asked him, so you didn't see Victor Davis laying
9 there? You didn't see Victor Davis laying on
10 the street? And I said a couple of things about
11 him, and he said no, that he wasn't there before
12 or after the homicide.

13 Q. Did you submit the oral swab that
14 you took from Ruben Jordan on February 10th of
15 2010 to the Hamilton County Crime Lab for
16 analysis?

17 A. Yes.

18 Q. And did you get a lab report back?

19 A. Yes, it confirmed the initial
20 findings that it was, in fact, his DNA.

21 Q. Okay. Ultimately, on February 18th
22 of 2010, Ruben Jordan was arrested --
23 February 17th of 2010, correct?

24 A. Yes.

25 Q. And you interviewed him on

1 February 18th of 2010?

2 A. Correct.

3 Q. Did he tell you at that point that
4 he had been down on Republic Street at any time
5 during the day, during the evening at any time
6 on October 31st of 2008?

7 A. He said that he may -- he could
8 have or maybe was there at 11:00 in the morning,
9 11:00 a.m., because he visited his children, but
10 he was only there a couple minutes.

11 Q. Okay.

12 A. Or his grandchildren.

13 Q. Now, I think I misspoke. This
14 conversation was February 18th -- or excuse me,
15 May 18th of 2010, correct?

16 A. May 18th. Yes, May 18th.

17 Q. Okay. Not February, but May?

18 A. Right.

19 Q. The first conversation was in
20 February of '10 when you swabbed him. The
21 second conversation is when he's charged on
22 May 18th, '10?

23 A. Right.

24 Q. Okay. And he specifically said 11
25 in the morning?

1 A. Yes.

2 Q. Okay. Detective, in preparation
3 for coming here today to testify, did you go to
4 the Official National Football League website?

5 A. I did.

6 Q. And did the Steelers play a
7 football game a Friday, October 31st of 2008?

8 A. No, they did not.

9 Q. Did any NFL team play on a Friday
10 night, February 31st (sic) of 2008, the day
11 Victor Davis was murdered?

12 A. No, they did not.

13 Q. Okay. I'm hooked on February.
14 October 31st, 2008.

15 A. No.

16 Q. Was the day of Victor Davis's
17 murder, correct?

18 A. Halloween night.

19 Q. Excuse me?

20 A. Halloween night.

21 Q. That was a Friday, correct?

22 A. Yes.

23 Q. And you checked the NFL website to
24 make sure that on October 31st, 2008, there were
25 no NFL games?

1 A. There were no NFL games. The last
2 time the Steelers played was on the 26th of
3 October, and then again on November 2nd.

4 Q. I'm going to show you what's been
5 previously marked for the purpose of
6 identification as State's Exhibit 15.
7 Detective, you have seen that item before?

8 A. I watched the criminalist take it.

9 Q. You, yourself, did not fill that
10 out, correct?

11 A. No, I did not.

12 Q. But you were present when that was
13 filled out?

14 A. I was present when she took it, not
15 when she filled this out. She would have done
16 that in her office.

17 Q. Okay. What specifically is that?

18 A. This is the property envelope for
19 Ruben Jordan's buccal swabs that we took in our
20 office.

21 Q. Did you initial the swabs or
22 anything like that, or does the criminalist take
23 care of all that?

24 A. The criminalist does that.

25 Q. Is this something that they're

1 trained to do so they handle all of the
2 collection of evidence?

3 A. Yeah, we let -- we let that stay
4 with the criminalist so it's all the same.

5 Q. Okay. Ultimately, there is a case
6 number assigned by not only your office, but the
7 crime lab, correct?

8 A. Correct.

9 Q. And does that case number match
10 this case that we are here on today?

11 A. Um --

12 Q. If you need to open it, you can.

13 A. I don't see -- we only go by one
14 case number for our unit, which is 10 -- or
15 would 08-H-63, and they probably wouldn't list
16 that on there.

17 Q. They don't list that on there?

18 A. These are just property numbers
19 that are assigned not by me.

20 Q. This is the subject of the swab
21 that was taken, this is the actual swab that was
22 taken from Ruben Jordan though on May 18 of
23 2010?

24 A. Yeah. I mean, I believe Detective
25 Burns -- I mean Criminalist Burns, this is her

1 handwriting, I have seen it enough, and she
2 labels it as the known buccal swab of Ruben
3 Jordan.

4 Q. Okay. And you often rely on each
5 other to do these types of jobs, you can't do
6 the entire investigation from top to bottom,
7 left to right --

8 A. No.

9 Q. -- on every case?

10 A. No. They are much more trained in
11 it than I am, as far as how to submit it and
12 whatnot.

13 Q. Okay. Thank you. Detective, the
14 person that was interviewed and that submitted
15 that buccal swab, do you see him in the
16 courtroom?

17 A. I do. He's in the striped gray
18 shirt sitting next to his female defense
19 attorney.

20 MS. SHANAHAN: Your Honor, may the
21 record reflect identification of the
22 defendant?

23 THE COURT: So noted.

24 Q. And that's the person that you
25 developed a suspicion of being involved in this

1 and, ultimately, charged with the murder of
2 Victor Davis, correct?

3 A. Yes.

4 MS. SHANAHAN: Thank you. Nothing
5 further at this time.

6 MR. WHALEN: Do you have any cross?

7 CROSS-EXAMINATION

8 BY MR. WHALEN:

9 Q. Good morning.

10 A. Good morning.

11 Q. First of all, the object that you
12 took from the scene that ultimately was sent to
13 the lab, you're calling it spit now, but the lab
14 report calls it phlegm?

15 A. To me it's the same, spit/phlegm.

16 Q. So to you it means the same thing?

17 A. Yeah. I think it was a little
18 thick, so I just remember it being thick and
19 frothy, split, phlegm.

20 Q. So if I just go spit on the carpet
21 here, you would call that phlegm?

22 A. No, I would call that more just
23 spit. This had substance to it, like I
24 indicated.

25 Q. Okay. And how long had that phlegm

1 been there?

2 A. It was fresh.

3 Q. How can you tell that?

4 A. Because, like I said, it had
5 substance to it. There was nothing on top of
6 it. Republic is an extremely busy cut-thru from
7 the park. If you're asking me for like an hour,
8 two hours, three hours, I don't know if you're
9 trying to get to me like a scientific thing. I
10 would say that it hadn't been there more than an
11 hour.

12 Q. And what do you base that on?

13 A. Just from seeing enough of it.

14 Q. Enough of what?

15 A. Spit/phlegm at my crime scenes.

16 Q. So you have watched phlegm from
17 other crime scenes and you have seen how long it
18 takes for it to dry up?

19 A. No, I don't know how long it takes
20 to dry out, but I have seen spit on the street
21 and you can tell if something is old or new.

22 Q. Tell me what you mean by new, an
23 hour, two hours, three hours?

24 A. I would say fresh, and I would say
25 about an hour.

1 Q. Now, you were at the scene and you
2 began your investigation?

3 A. Correct.

4 MR. WHALEN: One second, Your
5 Honor.

6 Q. Did police officers come up and
7 talk to you about other -- I'm sorry, let me
8 retract that.

9 When you were given information
10 about Shawn Gilbert involved with Victor Davis
11 when Brian Austin was killed?

12 A. We found out that he was Kareem's
13 brother and, yes, he was on our radar.

14 Q. Okay. And did you question him?

15 A. Yes.

16 Q. Okay. And didn't get any
17 information from him?

18 A. No. He basically said he had no
19 idea where his brother was. He actually
20 didn't -- wouldn't answer anything for us.

21 Q. Okay. Now, when Kareem was
22 indicted, that was by the Grand Jury, am I
23 correct?

24 A. Correct.

25 Q. And it's my understanding that

1 there are two grand juries in the Hamilton
2 County prosecutor's office that run every day,
3 five days a week, am I correct?

4 A. I don't know much about it, but
5 there is two rooms, if that's what you mean.

6 Q. Okay. Well, when Kareem was
7 indicted, did you go in and testify in front of
8 the Grand Jury?

9 A. Yes.

10 Q. Okay. And who was the prosecutor
11 then? Let me -- Seth Tieger was the prosecutor
12 then; is that correct?

13 A. Correct.

14 Q. And when you go in the Grand Jury,
15 there is nine -- or 11 people in there and a
16 court reporter and a prosecutor. There is no
17 defendant, no defense attorney, anything like
18 that?

19 A. Correct.

20 Q. And at the time that the jury votes
21 after you're done, two of the alternates leave,
22 nine people are in there and they secretly vote
23 on whether to indict somebody?

24 A. Correct.

25 Q. And they are given instructions by

1 the prosecutor, Mr. Tieger, in this particular
2 case?

3 A. I don't know, I'm not in the room.

4 Q. Okay. Nobody is, but, I mean, the
5 prosecutor even leaves when they vote?

6 A. Okay.

7 Q. And they returned an indictment
8 against Kareem?

9 A. Okay.

10 Q. Am I correct?

11 A. Yes.

12 Q. If I'm wrong, tell me I'm wrong.

13 A. Well, he was indicted.

14 Q. Now, you prepared the case against
15 Kareem?

16 A. Yes.

17 Q. Okay. And on May 17th, you were
18 prepared to go to trial in front of a jury and
19 tell them that you knew Kareem committed that
20 crime?

21 A. Correct.

22 Q. Now, you indicated that on February
23 the 10th you took a swab of my client's mouth?

24 A. May. It had to have been in May.

25 Q. May the 10th, okay. And you were

1 told that you had a hit with the phlegm?

2 A. In January. January, I got the
3 hit. May, I took the swab.

4 Q. I'm sorry. I'm lost. When you say
5 you got a hit?

6 A. Uh-huh.

7 Q. That means that the lab was told
8 that they found somebody that matches that?

9 A. That was in January.

10 Q. And they told you then that my
11 client matched that?

12 A. Correct.

13 Q. Now, you didn't go to the Grand
14 Jury then and charge Mr. Jordan with it, did
15 you?

16 A. No.

17 Q. You waited all the way up until May
18 the 18th?

19 A. I developed more witnesses, Bobbi
20 Jones and Kenneth Heard and Kareem.

21 Q. But, um, until the 18th, you were
22 ready to go forward against Kareem?

23 A. 18th of, I'm sorry, what month?

24 Q. May. I'm sorry.

25 A. Correct.

1 Q. So you were all set to go to trial
2 against Kareem?

3 A. Correct.

4 Q. So the only thing you had different
5 on the 18th was that Kareem now says my daddy
6 was there and told you what he did?

7 A. And the CODIS hit.

8 Q. But you had that in January?

9 A. Correct. But I didn't get the swab
10 until May, right? I can't just go on a CODIS
11 hit, I have to get a confirmation, sir.

12 Q. That's what I asked you. When did
13 you get the confirmation?

14 A. January. I got the CODIS hit in
15 January.

16 Q. When did you get the match with
17 Ruben Jordan?

18 A. It probably -- I don't know. I
19 don't know. I know the day that we took the
20 swab, but I don't know when I got the
21 confirmation.

22 Q. All right.

23 A. I would have to look at paperwork.

24 Q. How do you know that the swab that
25 you saw taken from Ruben Jordan is contained

1 within State's Exhibit Number 15?

2 A. Because my criminalist wouldn't
3 lie, and because it's a match according to the
4 lab, unless they're lying.

5 Q. So, you're relying on somebody's
6 honesty --

7 A. Absolutely.

8 Q. -- to show that that is the same
9 thing. You didn't see it put in there, you
10 didn't see it marked and you don't know what she
11 did with it when they take it?

12 A. I saw her take it. There is no
13 reason why Criminalist Burns would lie. How
14 else would she have gotten a match? How else
15 would the crime -- how else would the lab get a
16 match?

17 Q. There could have been all kinds of
18 answers to that. They could have -- you know
19 they had prior swabs taken from my client. He's
20 been swabbed two or three times?

21 A. Not by my office.

22 Q. I didn't say by your office. When
23 a person goes to the penitentiary, there is a
24 swab taken?

25 A. Well, you might have to take this

1 up with the lab, but I'm telling you I believe
2 my criminalist, they don't lie, and I believe
3 our lab. There is no reason -- there would be
4 no reason why they would make this some
5 conspiracy.

6 Q. But the bottom line is you didn't
7 see that, go up to the lab, and you didn't mark
8 it, and you cannot say beyond a reasonable doubt
9 that that's that swab.

10 A. I'm telling you I believe this is
11 the swab. I'm telling you Criminalist Burns,
12 this is her handwriting, I saw her take the
13 swab. No, I did not watch her actually put it
14 in the package.

15 Q. My question you could answer yes or
16 no and explain. You can't tell the ladies and
17 gentlemen of the jury of your own knowledge that
18 that's the swab they took from Ruben Jordan?

19 A. No.

20 Q. Now, you talk about people that you
21 talked to. Did you talk to Ernest Seay?

22 A. Yes.

23 Q. Ernest Seay told you that Kareem
24 admitted to killing him, didn't he?

25 A. Yes.

1 Q. Okay. And Anthony Jordan told you
2 the same thing, Kareem admitted he did the
3 killing?

4 A. No, he did not say that.

5 Q. He didn't say that. What'd he say?

6 A. He said --

7 MR. TIEGER: Objection. It's
8 hearsay.

9 THE COURT: Counsel, you have a --

10 MR. WHALEN: No, Your Honor.

11 THE COURT: All right. You are
12 withdrawing that question.

13 Q. You had several other people that
14 came to you and told you that Kareem did the
15 killing?

16 MR. TIEGER: Objection.

17 THE COURT: Basis?

18 MS. SHANAHAN: Hearsay.

19 MR. WHALEN: Your Honor, she's
20 talked about all the evidence that she
21 heard, people whispering through windows,
22 all of that is part of her investigation
23 and I'm asking her about that.

24 THE COURT: Well, the State did put
25 on evidence that persons were at the

1 scene. The word was this, the word was
2 that. I think in keeping with that, I
3 will overrule that objection.

4 Q. Isn't that correct?

5 A. Can you repeat it? I'm sorry.

6 Q. Yes. Other people came to you and
7 told you that Kareem admitted doing it?

8 A. No, nobody came to me and said
9 Kareem admitted to doing it.

10 Q. Other than Ernest Seay?

11 A. Ernest Seay, in his letter to me,
12 said "he". And I don't know who "he" is. Is it
13 Ruben or is it Kareem? Ernest Seay's letter to
14 me said he killed Kareem, and that something
15 about 3,000, and that he admitted to Brian
16 Austin's murder, and I can't recall all of it.

17 Q. You sat down and took a recorded
18 statement from Mr. Seay, did you not?

19 A. I believe we did.

20 Q. And in that he told you Kareem
21 admitted to him that he did the killing of
22 Victor?

23 A. That Kareem did the killing or that
24 he did the killing?

25 Q. That Victor -- that Kareem admitted

1 he did the killing, that he, Kareem, did the
2 killing?

3 A. I would have to read the
4 transcript. I'm sorry.

5 MR. WHALEN: Page 17.

6 Q. We've already heard the statement
7 that Kareem gave you on May the 17th.

8 A. Yes, sir.

9 Q. And in there -- and that statement
10 was done in your presence?

11 A. Yes, sir.

12 Q. And you initiated it?

13 A. What do you mean initiated? I
14 didn't initiate it.

15 Q. You didn't initiate it. Who
16 initiated it?

17 A. Kareem and his attorney.

18 Q. They are the ones that asked for
19 the statement to be made?

20 A. Yes.

21 Q. Okay. In there Officer Ballman
22 says you heard Ernest Seay in your motion and he
23 answers yeah, man. Look, he was on. And then
24 you, the officer, said that you confessed to
25 him. You didn't hear that?

1 A. I don't understand what the
2 question is. You're asking if that's in the
3 statement, or did I hear that comment being made
4 in our --

5 Q. Both. Are there differences from
6 what you heard and what's in his statement?

7 A. You're saying that Officer Ballman
8 asked him a question?

9 Q. Asked him. You heard Ernest Seay
10 testify in your motion and he answered, yeah,
11 man. Look he was on, and he says that you
12 confessed to him to Ernest Seay.

13 A. That Kurt says you confessed to
14 him?

15 Q. Yes.

16 A. Yes, I believe Kareem said that.

17 Q. And he acknowledged that -- in
18 there then, they're acknowledging that Ernest
19 Seay told you that Kareem confessed to him?

20 A. Yes.

21 Q. All right. Now, in your statement
22 that was taken on March 13th on Page 17, there
23 is a statement, and the old man is yours.
24 Ernest Seay: Yeah. The detective says: And
25 the second guy is my case, his best friend? He

1 says: His best friend called the victim.

2 Ernest says: Uh-huh. Detective: Which would
3 be the second victim, and said I am ready to go
4 to talk to detectives, so then they met him.

5 Ernest said: Yeah. Detective: That night when
6 he was killed. Seay: Yes. Did you take -- did
7 you take it like that? Ernest: That's the way
8 I took it.

9 Did Ernest say to you in that
10 statement on Page -- that was Page 10. Ernest
11 Seay answers no. My expert opinion, Kareem was
12 a coldblooded killer. I mean, I've done wrong.
13 I have done some real heinous stuff in my time,
14 but he was no -- he has no compucture
15 (phonetic) whatsoever about killing anyone. He
16 was on the phone with his mother, and his step
17 dad was on the phone, and his mother kept
18 giving his step dad the phone and he got mad.
19 And he said while she was giving him the damn
20 phone, when I get up, I'm going to do him. And
21 in that statement he told you that Kareem
22 killed Victor Davis?

23 A. You've read all that, but the part
24 that you're saying --

25 Q. Are you saying that during that

1 statement?

2 A. I'm saying I would need to -- I
3 have not reviewed that statement. I'm saying I
4 agree with what you're saying -- what you're
5 reading to me, but -- about Kareem being a
6 coldblooded, I agreed that was said, but I
7 don't --

8 Q. All right. We'll come back to
9 that. As part of your investigation, did you go
10 to Ruben Jordan's house and do any search?

11 A. Ruben Jordan's house? which house?

12 Q. On Hearne.

13 A. No. I think it's demolished now.
14 I think it was demolished.

15 Q. Are you aware that ESPN shows prior
16 games of football games on some of their shows?

17 A. No.

18 Q. Are you aware that there is a disc
19 out that's called Steelers Greatest Moments?

20 A. No, I'm not aware.

21 Q. And it shows Steeler football
22 games?

23 A. I'm not aware.

24 Q. Not aware of that, okay. Now,
25 Victor Davis, in your investigation, did you

1 learn that he ran a bootleg cab?

2 A. Yes.

3 Q. Okay. What is a bootleg cab?

4 A. It's a person that, instead of
5 being a cab driver with a license, they pick up
6 people for money for rides places.

7 Q. And they don't have a cab license?

8 A. Correct.

9 Q. Okay. Did you learn in your
10 investigation that Victor Davis was selling
11 Ecstasy?

12 A. I think he was selling weed, and I
13 think we heard X.

14 Q. Okay. I'm going to Kenneth Heard's
15 statement of February the 11th, and it's Page 3.
16 And you asked -- you say, okay. And Mr. Heard
17 said: His name is Ruben Jordan. He's in his
18 early 20s.

19 A. No. Obviously, he's a male black,
20 38.

21 Q. So this is wrong on Page 3?

22 MR. TIEGER: Judge, I think the
23 witness should be given a chance to look
24 at Page 3 to see what.

25 MR. WHALEN: Can I approach the

1 witness?

2 THE COURT: Yes.

3 A. That's exactly the part, if you
4 listen to the tape. He says -- Mr. Heard: His
5 name is Ruben Jordan. He's in his early 20s, is
6 what it says. That's not what it says on the
7 tape. I listened to the tape, it says he's in
8 his early 30s, like that, and I cut him off.
9 Where it says Detective Luke: When did he tell
10 you? That's when I cut him off. He doesn't
11 even get that statement out. And I said when
12 does he tell you this?

13 MR. WHALEN: Can we approach, Your
14 Honor?

15 THE COURT: Yes. The jury can
16 stand up at this point and talk among
17 yourselves except about this case.

18 (Unreported sidebar conference.)

19 THE COURT: You may all be seated.

20 (Defendant's Exhibit E marked for
21 identification.)

22 (Playing a portion of Defendant's
23 Exhibit E.)

24 THE COURT: You may have to start
25 that over. Counsel?

1 MS. SHANAHAN: I don't think it can
2 really be heard.

3 THE COURT: I didn't hear it. Is
4 that as loud as it goes?

5 BAILIFF: Yes.

6 THE COURT: Can we put a microphone
7 over there. I don't know if this one
8 will reach over there. Pull this
9 microphone over there.

10 Can the witness approach on -- do
11 you want the jury to hear this, too?

12 MR. WHALEN: Yes.

13 MR. TIEGER: I think it was what
14 you said, 45 to 53.

15 THE COURT: One second. Start over
16 again, because I'm going to turn up any
17 microphone.

18 (Playing a portion of the CD.)

19 A JUROR: We can't understand it.

20 THE COURT: Why don't we move the
21 whole computer to another part? Can we
22 do that? We can't do that, can we?

23 MR. TIEGER: Let me see if this one
24 stretches a little further.

25 THE WITNESS: That's about as far

1 as it will go.

2 THE COURT: You know what I think,
3 I think we'll take a break and try to get
4 our technology. Start over. Start over.

5 MR. TIEGER: I don't think we are
6 at that point yet, Judge.

7 (Playing a portion of CD.)

8 A JUROR: Your Honor, it's not real
9 clear, still even like that.

10 MR. TIEGER: Judge, I think that's
11 what the witness was trying to explain,
12 that he said early for, and then it just
13 cuts off. It very difficult.

14 THE COURT: I know, but they want
15 --

16 MR. TIEGER: The fact is the
17 transcript says early 20s.

18 THE COURT: Counsel, I think you're
19 testifying now.

20 MR. TIEGER: Okay, Judge.

21 THE COURT: Right now. I was able
22 to hear. I was able to hear. I just
23 don't know whether we can have them come
24 over here individually or something.

25 MR. WHALEN: Rather than do that,

1 Your Honor, it's marked as Defense
2 Exhibit E.

3 THE COURT: Correct, they can play
4 it.

5 MR. WHALEN: Right. And we'll ask
6 that it be admitted, and then they can
7 play it back in the jury room.

8 THE COURT: That's true. All
9 right.

10 MR. TIEGER: Judge, the problem is
11 that, um, I mean, that's an entire
12 statement that he gave, and it's -- let
13 me take a look at it real quick, Judge.

14 THE COURT: So you're objecting to
15 the admission of part of it, but not all
16 of it?

17 MR. TIEGER: Judge, I guess what
18 I'm asking, if you're going to admit
19 anything that Mr. Heard said, we should
20 admit all of the statements that he's
21 given. If you're going to admit -- he's
22 playing the statement simply for the fact
23 that it says --

24 THE COURT: Something.

25 MR. TIEGER: -- says early 20s just

1 for that one specific point.

2 MR. WHALEN: Your Honor, we'll
3 withdraw the exhibit.

4 THE COURT: You're withdrawing it?

5 MR. WHALEN: Yes.

6 THE COURT: All right. Well --

7 MR. WHALEN: Rather than have them
8 hear the whole thing, yes.

9 THE COURT: Okay then.

10 BY MR. WHALEN:

11 Q. As part of your investigation, did
12 you listen to the 911 calls that came in the
13 night that Victor was killed and the
14 Crimestopper calls?

15 A. I don't think that I listened to
16 them.

17 Q. Those weren't significant?

18 A. I probably would have read the CAD.

19 Q. Explain to me what CAD is.

20 A. The CAD is a transcript -- or the
21 calls that come in, it's kind of written word
22 about the 911 calls. I know that we called the
23 911 caller back from that CAD, Mr. Shade.

24 Q. And he wasn't the only one that
25 called?

1 A. I don't recall.

2 Q. Okay. Now, as part of your
3 investigation you called the coroner to come out
4 to the scene?

5 A. Yes, they automatically respond.

6 Q. And in this particular instance she
7 came out to the scene, worked with you and then
8 performed a post the next day?

9 A. I don't know when she did it.
10 we -- usually it is the next day.

11 Q. Did you get a report from her?

12 A. Yes.

13 Q. Okay. And what type of bullet
14 killed Victor Davis?

15 A. I believe it was small, but I would
16 have to look at the report. If I remember
17 right, it was small caliber.

18 Q. If I told you it was a .22, would
19 you believe that?

20 A. Yes.

21 Q. Okay. So you took a statement from
22 Kareem on May the 18th -- or May 17th, and in
23 there he's giving you what happened at the scene
24 when Victor Davis died?

25 A. Correct.

1 Q. And he's talking about his father,
2 and he said afterwards he started to everything,
3 and the next thing I know he started -- he
4 pulled out a .38 and just started shooting.
5 Now, you can't have a .38 by the witness'
6 testimony when it was a .22 that killed
7 somebody, can you?

8 A. Um, I actually thought we asked
9 about that and it would fire a .22.

10 Q. It was a what?

11 A. I believe our office questioned
12 that, and that a .22 could be fired from that
13 gun.

14 Q. But that night you didn't know
15 that?

16 A. What night?

17 Q. The night of May -- or the day of
18 May 17th?

19 A. Well, no, he's telling us that, so
20 I believe Detective Ballman followed up with
21 that and found out that a .22 can be shot out of
22 that gun.

23 Q. I'm not asking you that.

24 MR. WHALEN: I'm going to ask that
25 that be stricken, Your Honor. I didn't

1 ask that question.

2 THE COURT: You're asking her
3 answer be stricken?

4 MR. WHALEN: Yes.

5 THE COURT: Overruled. You can
6 rephrase -- re-ask the question.

7 Q. On May the 17th, Kareem told you
8 his daddy used a .38?

9 A. Yes.

10 Q. And that concerns you?

11 A. Not anymore.

12 Q. On May the 17th you were concerned
13 when he said it was a .38?

14 A. We questioned it, yes.

15 Q. Okay. And when you said to him, or
16 somebody said when you say .38, do you mean a
17 revolver? Answer by Kareem: Yes. Kind of
18 cowboy pistol? Yeah, just how you know it.
19 Yeah. Okay. Question by one of officers:
20 But -- by you: But you're not for sure it was a
21 .38, you just know it was a revolver? Answer:
22 Yeah, it was a .38 special, you know what I
23 mean?

24 You were concerned about that at
25 the time?

1 A. Yeah, because I probably remember
2 it being a .22, and I was wondering if that
3 would, in fact -- if that round would fit in
4 that gun.

5 Q. Now, on Page 12 of Kareem's
6 statement, he says that Victor made it in his
7 house. They were talking like as far as you
8 made it, it was right there in front of the car.
9 And a couple of questions later he says, in the
10 middle of the street? And he says, yeah, like
11 here, but they were tussling for a minute in the
12 car.

13 There wasn't any evidence that
14 there was any tussling in the car, was there?

15 A. No.

16 Q. Okay. Now, as far as your
17 investigation shows, Victor Davis got out of the
18 car, was killed and never got inside the walkway
19 for his building, am I correct?

20 A. We heard that people heard tussling
21 and they weren't sure if it was in the hallway
22 or outside.

23 Q. My question was: You didn't find
24 any evidence to indicate that Victor Davis was
25 inside that hallway to his building?

1 A. Correct.

2 Q. Okay. And further on Page 12, he
3 says yeah, like right here, but they was
4 tussling for a minute in the car. They were
5 tussling, yeah. And as they were tussling,
6 though, he was shooting him, shooting though,
7 like he was moving and he saw bullets, and then
8 he just, shit, hit him in the head. I'm like
9 damn.

10 You didn't find any evidence that
11 there was any shooting in the car; isn't that
12 correct?

13 A. I never took it there was a
14 shooting in the car. I took it as he got out of
15 the car because his car keys were found outside.
16 we never thought that it took place in the car.

17 Q. So what I have just read you Kareem
18 didn't say?

19 A. I don't know. You have to repeat
20 it or can I read it, please?

21 Q. Sure.

22 MR. WHALEN: Can I approach the
23 witness, Your Honor?

24 THE COURT: Yes.

25 A. I'm reading as far as he made it

1 was like right there in front of the car.

2 Q. He says they were tussling in the
3 car?

4 A. He says they was talking, and like
5 as far as he made was like right there in front
6 of the car.

7 Q. Okay. What does he say down here?

8 A. Right where he was -- right. And
9 then I say right where he was found almost?
10 Yeah.

11 Q. It says here, but they were
12 tussling like for a minute in the car, does it
13 not say that?

14 A. Yeah. Like right here, but they
15 was tussling like for a minute in the car.

16 I don't know if he means in the
17 car. I would have to again listen to the tape
18 would be most beneficial.

19 Q. Well, we have listened to that
20 here.

21 MR. TIEGER: Judge, I believe
22 that's an exhibit also that the jury will
23 get also, so...

24 THE COURT: Yes.

25 Q. Now, in Kareem's statement he tells

1 you that he could have killed Victor Davis that
2 night, but he let him go.

3 A. That was Brian Austin's murder,
4 yes.

5 Q. And then when you're talking to
6 Ernest Seay -- I'm on Page 4, second statement
7 of March 13th.

8 On Page 3, the detective says
9 okay. Ernest Seay says: Okay. When he start
10 telling me. He said well, I said what
11 happened. He said this old man had seen him
12 kill someone. Detective said: Did he say who
13 that was that he killed? Ernest Seay: He
14 won't talk the names. Detective: Okay.
15 Ernest Seay: That's why I put it in the thing.
16 I said I may have to wear a wire because he
17 won't give names. Detective: Okay. But he
18 tells me the details. He tells me that, all
19 right, he said the old man was there when he
20 killed him. And he said he first killed the
21 first individual. Detective: All right.

22 MR. TIEGER: Judge, I'm going to
23 object. I mean, I don't think we're here
24 to read transcripts of witnesses that
25 aren't even here.

1 THE COURT: Counsel, do you want to
2 respond? Are these not statements that
3 --

4 MR. TIEGER: Judge, I understand
5 that you allowed in some basically
6 conclusions that Officer Luke had reached
7 based on her investigation, but now we
8 are getting kind of to the next step, we
9 are reading transcripts of a person, and
10 I would object at this point.

11 THE COURT: And do you want to
12 respond to that? Is this not a public
13 record or report that the defense is
14 introducing, that is -- that was
15 collected by the police department?

16 MR. WHALEN: Sure, it was
17 collected. It's a statement this officer
18 made with Ernest Seay.

19 THE COURT: It may be offered by
20 the defendant under 803(8), so I have to
21 overrule that.

22 BY MR. WHALEN:

23 Q. And he goes on, he said his friend
24 then calls the old man and tells him, I'm ready
25 to go talk to the detectives. And he says that

1 when he -- him and his friend went and met the
2 old man that he killed him. He said he went and
3 he met him and killed him. And he said -- he
4 said that the reason he did it was because the
5 old man couldn't keep his mouth shut. He was
6 snitching and he tried to blackmail his mother.
7 You don't remember him telling you that?

8 A. I do. My point in all that is who
9 is the "he"?

10 Q. The subject of your questioning
11 Seay was -- Kareem Jordan -- Kareem Gilbert?

12 A. Excuse me. I don't want to -- I
13 know what I'm talking about, but I can't tell
14 you what Kareem, what his thought process when
15 he's talking to Ernest.

16 Q. I'm talking about you. My original
17 question was, you took a statement from Ernest
18 Seay?

19 A. Yes.

20 Q. And he told you that Kareem
21 admitted to him that he killed Victor Davis?

22 A. I see where you are, what you are
23 saying, and I do believe he may have been saying
24 that, but I also think that -- I always have to
25 validate the "he's". When people are telling me

1 he, he, he, who is he? who are you talking
2 about?

3 Q. Ernest Seay told you that Kareem
4 Gilbert admitted to him, Mr. Seay, that he
5 killed Victor Davis?

6 A. Ernest Seay, I believe, without
7 looking at the transcript, was telling me that
8 he was speaking to Kareem in the jail where they
9 were at, and that Kareem was telling him that he
10 killed Victor Davis. I'm saying that I'm not
11 sure who the "he" is.

12 Q. So you didn't know who Seay was
13 talking about then?

14 A. I assumed then, like you, that it
15 was Kareem himself. Right now I'm not -- now, I
16 don't know. I can't answer that.

17 Q. I'm not talking about now, I'm
18 talking about before. And as a result of that
19 information that you got and everything else,
20 Kareem was charged with the murder of Victor
21 Davis?

22 A. Yes.

23 Q. And when you gave the defense
24 attorney a list of witnesses that you had,
25 Ernest Seay was one of those witnesses?

1 A. Correct.

2 Q. And he was going to come in and
3 talk about what Kareem had admitted that he did
4 to Victor Davis?

5 A. Yes.

6 MR. WHALEN: Okay. Could I have a
7 moment, Your Honor?

8 THE COURT: Yes.

9 Q. In your investigation of Kareem
10 Gilbert, you talked to Anthony Jordan, did you
11 not?

12 A. Yes.

13 Q. And you had a lineup, a photo
14 lineup for him to look at?

15 A. No.

16 Q. An actual lineup?

17 A. No.

18 Q. You never had him identify anybody
19 for you?

20 A. I did not have a photo array.

21 Q. Did you have him identify anybody
22 for you?

23 A. Yes.

24 Q. How?

25 A. In a single picture.

1 Q. And who did he identify?

2 A. Kareem Gilbert.

3 Q. And he identified him as being the
4 one that shot Victor Davis?

5 A. Yes. He said he saw him running
6 from the scene.

7 Q. And you're talking about the scene
8 of Victor Davis's -- or Victor's --

9 A. Correct.

10 Q. -- killing?

11 A. Correct.

12 MR. WHALEN: I have no other
13 questions, Your Honor.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY MS. SHANAHAN:

17 Q. Detective, that witness who said
18 they saw Kareem Gilbert running from the scene,
19 in fact, Kareem was at the scene of Victor
20 Davis's murder, correct?

21 A. Yes, he was.

22 Q. And you never did believe that
23 Kareem stayed in the car the whole time, did
24 you?

25 A. I never believed that.

1 Q. Okay. So it's logical he was seen
2 running from the scene?

3 A. Correct.

4 Q. You believe that Kareem Gilbert was
5 there when Victor Davis was murdered, correct?

6 A. Yes.

7 Q. He's the reason Victor Davis was
8 murdered?

9 A. Correct.

10 Q. In fact, Victor Davis was murdered
11 because he saw Kareem Gilbert murder Brian
12 Austin?

13 A. Correct.

14 Q. Part and parcel, Kareem Gilbert is
15 as responsible as Ruben Jordan for the murder?

16 A. Absolutely.

17 Q. Who do you believe the triggerman
18 was?

19 A. Mr. Jordan, his dad.

20 Q. Ruben Jordan?

21 A. Yes.

22 Q. But Kareem was there?

23 A. Absolutely.

24 Q. So the fact that Kareem Gilbert
25 bragged as an 18-year-old kid in the jail to

1 some other inmate about his criminal history,
2 does that surprise you?

3 A. Not at all.

4 Q. Okay. In fact, that other inmate,
5 Ernest Seay, you're familiar with his lengthy
6 criminal record?

7 A. Yes.

8 Q. He's been convicted of robbing
9 people at gunpoint, correct?

10 A. Correct.

11 Q. Attacking a woman on Ludlow with a
12 stun gun, correct?

13 A. Yes.

14 Q. Rape?

15 A. Yes.

16 Q. Sexual assault in the State of New
17 York, correct?

18 A. Yes.

19 Q. He escaped after he faked a heart
20 attack from University Hospital, correct?

21 A. Correct.

22 Q. Extremely serious violent crimes,
23 correct?

24 A. Yes.

25 Q. And an 18-year-old kid is bragging

1 to this guy that he's stuck in the jail with,
2 right?

3 A. Right.

4 MS. SHANAHAN: Nothing further.

5 THE COURT: Anything else from this
6 witness?

7 RECROSS-EXAMINATION

8 BY MR. WHALEN:

9 Q. And with all the crimes that Mr.
10 Seay has committed, violent and horrible crimes,
11 he tells you that Kareem Gilbert is a
12 cold-blooded killer?

13 A. Correct.

14 Q. And he was impressed by how
15 cold-blooded he was?

16 A. That's what he said, yes.

17 MR. WHALEN: I have no other
18 questions, Your Honor.

19 THE COURT: Do you have anything
20 else?

21 MS. SHANAHAN: No, Your Honor.
22 Thank you.

23 THE COURT: Thank you. You may
24 step down. Thank you for your testimony.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 THE COURT: Does the State have any
3 other witnesses at this time?

4 MR. TIEGER: Judge, we were
5 planning on just -- basically, there is a
6 stipulation as to all the crimes that
7 Ms. Shanahan read, as far as the weapon
8 under disability that Mr. Jordan actually
9 had been convicted of.

10 THE COURT: Are we going to do this
11 in the presence of the jury?

12 MR. TIEGER: I think we do, because
13 there is a stipulation. And, quite
14 frankly, Judge, we were going to rest at
15 this point.

16 THE COURT: You may want to call
17 more witnesses?

18 MR. TIEGER: No. I mean, based on
19 Mr. Whalen's question about Exhibit 15,
20 which is the DNA swab, we, quite frankly,
21 did not think that that was an issue.
22 That what's contained in that envelope is
23 actually his buccal swab.

24 THE COURT: If you want to call
25 more witnesses, that's certainly your

1 prerogative.

2 MR. TIEGER: Because of his
3 questioning of Detective Luke, and the
4 questioning as to, do we really know
5 whose DNA is in that envelope, we
6 actually -- I had asked Detective
7 McGuffey, who's sitting in the courtroom,
8 to try to get ahold of the Criminalist
9 Burnes who actually took the swabs. She
10 may not be available till -- she
11 apparently is in physical therapy and
12 might not be able to be here until one or
13 so.

14 THE COURT: So, do you want to take
15 a lunch break?

16 MR. TIEGER: I mean if we can get a
17 stipulation that that actually is his
18 buccal swab, then we would not.

19 MR. WHALEN: Your Honor, we'll
20 stipulate. That wasn't my point. My
21 point was that the officer was testifying
22 to something she couldn't testify to.

23 THE COURT: But you will stipulate
24 that?

25 MR. WHALEN: Yes.

1 THE COURT: So, you are stipulating
2 that buccal swab does contain the DNA of
3 defendant, Ruben Jordan?

4 MR. WHALEN: Yes, ma'am.

5 THE COURT: So, there is no need to
6 call that witness?

7 MR. TIEGER: That's correct, Judge.

8 THE COURT: All right. At this
9 time, will you be resting, or do you want
10 a moment to do something else?

11 MR. TIEGER: Maybe just a moment to
12 figure out how we're gonna word the
13 stipulation.

14 THE COURT: Is this a good time for
15 a break? I'm willing to give the jury a
16 break at this time. And would you
17 remember the admonitions not to discuss
18 this testimony. You promise not to
19 discuss this case while we are on a
20 break, and it will be for 15 minutes
21 until noon, and then we'll figure out
22 what time lunch will be. Thank you. I
23 mean 11. I'm sorry. Come back at 11,
24 not noon.

25 (The jury leaving the courtroom at

1 10:45 p.m.)

2 MR. TIEGER: Judge, on the
3 stipulation, we would just read in,
4 either Ms. Shanahan or myself, just
5 the -- I think Ms. Shanahan had already
6 read in, I think, this was opening.

7 MR. WHALEN: Your Honor, if we have
8 got some things to discuss, and my client
9 has to go to the restroom, is it all
10 right if the officer removes him to go to
11 the restroom?

12 THE COURT: Yes. He can take him.

13 MR. TIEGER: And we can figure that
14 out when he gets back.

15 THE COURT: Can you all discuss
16 whatever that stipulation is you're
17 trying to get to?

18 MR. TIEGER: Yes.

19 THE COURT: And procedurally while
20 he's out of the room --

21 MR. WHALEN: Yes.

22 THE COURT: -- procedurally discuss
23 something with you?

24 MR. WHALEN: Yes.

25 (Recess.)

1 THE COURT: Court is back in
2 session. You may remain seated. Court
3 is back in session. Okay. You can
4 advise the jury that we'll probably be
5 another 15, 20 minutes.

6 MR. TIEGER: Yeah.

7 THE COURT: Other motions that the
8 lawyers are making. All right. Counsel,
9 has the State rested, except for
10 stipulations?

11 MR. TIEGER: Yes, Your Honor.

12 THE COURT: So you want to make
13 your stipulations before you rest and
14 then exhibits?

15 MR. TIEGER: Yes, Your Honor.

16 MS. SHANAHAN: The State and the
17 defense have entered into a stipulation,
18 as far as the prior record of the
19 defendant that is listed in Count 2 of
20 the indictment, the weapon under
21 disability charge, which includes
22 possession of drugs in B0309177 on
23 February 6th, 2004; preparation of
24 marijuana for sale, under B0006899 on
25 December 14th, 2000; illegal processing

1 of drug documents in B955989 on
2 October 17th, 1995; aggravated
3 trafficking in drugs in B929170 on
4 March 19th, 1993; and drug abuse in
5 B911528 on May 1st of 1991.

6 The defense has agreed that the
7 defendant, Ruben Jordan, is, in fact, the
8 person that was convicted in all of these
9 cases of all of these counts for the
10 weapons under disability purpose, Your
11 Honor.

12 THE COURT: All right. And there
13 is already a stipulation to the buccal
14 swab, which is State's Exhibit something.

15 MR. TIEGER: I believe it's 15,
16 Your Honor.

17 THE COURT: The exhibit does, in
18 fact, contain the DNA of defendant Ruben
19 Jordan.

20 MR. TIEGER: Yes.

21 THE COURT: Is there a stipulation?

22 MS. SHANAHAN: There is no -- there
23 is just all of the exhibits, which are
24 numbered one through, I believe, it's 31,
25 but I need to check that.

1 THE COURT: That's quite a few.

2 MR. TIEGER: I think a lot of them
3 have been admitted.

4 THE COURT: Have you reviewed
5 these, Counsel, these exhibits that
6 they're about to admit?

7 MR. TIEGER: I think a lot of them
8 have previously been admitted.

9 MR. WHALEN: I think the majority
10 have been admitted.

11 THE COURT: I think they were
12 during the trial.

13 MR. TIEGER: I'm sure there is some
14 that haven't been. We want to make sure
15 we go through those.

16 MS. WILLIAMS: I only wrote 1
17 through 30.

18 MS. SHANAHAN: They have 1 through
19 31, Your Honor. We can go through them
20 individually.

21 MR. TIEGER: I think we should.

22 THE COURT: Do you know what that
23 31st exhibit is?

24 MS. WILLIAMS: I got everything but
25 31.

1 MR. TIEGER: Thirty-one is a taped
2 statement of --

3 MS. WILLIAMS: Okay.

4 MS. SHANAHAN: -- of Kareem
5 Gilbert.

6 THE COURT: I definitely want to
7 know if you object to that one, the taped
8 statement of Kareem Gilbert?

9 MR. WHALEN: No, we do not.

10 MR. TIEGER: What am I grabbing,
11 Megan?

12 MS. SHANAHAN: The diagram that is
13 rolled up sitting there. State's Exhibit
14 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are
15 photographs from the crime scene; State's
16 11 is the DNA lift from the phlegm at the
17 crime scene; State's 12 is the diagram,
18 the large blowup of the diagram of the
19 Victor Davis crime scene; 12-A is the
20 same diagram, but the smaller version
21 that was put on the Elmo; State's 13 are
22 the shell casings from the Brian Austin
23 murder; State's 14 is the autopsy bullets
24 from Victor Davis's homicide; State's 15
25 is the known buccal swab of the defendant

1 Ruben Jordan; State's 16 is lab report
2 CC0802884, report Number 6 from the
3 Hamilton County Crime Lab; State's 17,
4 18 -- or excuse me, I double numbered.
5 There is going to be a State's 16-A,
6 which is a photograph, 17, 18, and 19.
7 These are all autopsy photographs.
8 Twenty and 21 and 22, 23, 24, 25, 26, 27,
9 28, 29 and 30 are all also autopsy
10 photographs, and photographs that the
11 crime lab took during the autopsy of
12 evidence.

13 THE COURT: All right.

14 MS. SHANAHAN: And then 31 is
15 Kareem Gilbert's audio-taped statement.
16 With the admission of all of these pieces
17 of evidence, then the State would rest.

18 THE COURT: Have you had a chance
19 to review all that?

20 MS. WILLIAMS: That's what I have,
21 Your Honor.

22 THE COURT: And you don't have any
23 objection to the admission of those
24 exhibits?

25 MS. WILLIAMS: I don't believe so,

1 no.

2 MR. WHALEN: No.

3 THE COURT: All right. So those
4 are admitted.

5 MS. SHANAHAN: Thank you, Judge.

6 THE COURT: State's Exhibits one
7 through 31.

8 (State's Exhibit Numbers 1 through
9 31 received into evidence.)

10 MR. TIEGER: Now we would rest.

11 THE COURT: And now the State is
12 officially resting?

13 MR. WHALEN: Your Honor, I'll make
14 a Rule 29 motion that this matter be
15 dismissed.

16 THE COURT: Go ahead, Counsel.

17 MR. WHALEN: The last exhibit, 31,
18 I believe, is Kareem's statement, and we
19 have all agreed that that was brought in
20 to impeach Kareem. It wasn't offered for
21 the truth of the matter.

22 Now, that's impeaching without it
23 being offered for the truth of the
24 matter. You have no evidence that this
25 man did anything except spit on a

1 sidewalk near a dead body sometime that
2 evening.

3 There is nothing else to bring my
4 client even close to somebody identifying
5 him as the killer. And with that result,
6 I think the Court has to dismiss it.
7 Even taking the case -- the State's case
8 in the best light, there is nothing to
9 show that Ruben Jordan committed this
10 crime.

11 THE COURT: Counsel, would you
12 repeat that? I want you to repeat that
13 for the record.

14 MR. WHALEN: Sure.

15 THE COURT: Because this document
16 was introduced for purposes of
17 impeachment?

18 MR. WHALEN: Yes, not for the truth
19 of the facts.

20 THE COURT: All right.

21 MR. WHALEN: And that's what it is,
22 it impeached Kareem Gilbert. It didn't
23 show any evidence against my client.
24 They just showed that Kareem had made two
25 different statements. You have no

1 evidence for the jury to consider for the
2 truth of the facts that my client
3 committed this murder, nothing. You have
4 a tape that was used to impeach him, and
5 that's it. There is nothing to go in
6 front of the jury that would identify my
7 client as being the person that was there
8 or did anything.

9 The only thing that you have then
10 is that phlegm that was collected that
11 they say matches my client's DNA.

12 THE COURT: All right. Do you want
13 to respond?

14 MR. TIEGER: Judge, I would
15 disagree. I think there is a lot more
16 than what Mr. Whalen said. If you
17 recall, Judge, Mr. Shade --

18 THE COURT: No, I don't believe --

19 MR. TIEGER: -- indicated he was
20 looking out his window. Mr. Heard also
21 testified that the defendant confessed,
22 and the defendant is also telling the
23 police that he may have been down there
24 at 11 in the morning, and the transcript
25 is replete, Judge, with many witnesses

1 saying that that actual spit, or whatever
2 you want to call it, was much, much
3 fresher, and that it is basically
4 impossible for it to have been deposited
5 there when the defendant said it was
6 deposited.

7 THE COURT: So, the question is
8 whether or not the State has put on
9 sufficient evidence on each element? And
10 circumstantial evidence, I have to
11 determine that there is no jury anywhere
12 who would find that it is sufficient.
13 And just on that basis, because there is
14 circumstantial evidence, then the Rule 29
15 is overruled, Counsel.

16 Do you have other motions?

17 MR. WHALEN: At this time, I want
18 to call a witness. I want to call Seth
19 Tieger.

20 THE COURT: Counsel, that's an
21 unusual thing to do, because if you call
22 the prosecution as a witness that would,
23 of course, require a mistrial.

24 MR. WHALEN: Correct.

25 THE COURT: And so you're asking

1 the Court for a mistrial?

2 MR. WHALEN: I am.

3 THE COURT: Would you -- and you
4 have to really state some very clear
5 grounds that are unequivocal. Tell me
6 why this prosecutor should be called as a
7 witness.

8 MR. WHALEN: Kareem Gilbert's
9 testimony to his statement that he made
10 on the 18th or 17th of May of 2010 is
11 critical to this case. And both
12 prosecutors sat in on that statement, and
13 Seth Tieger asked questions of him.

14 And I want to go beyond the
15 statement itself and have Mr. Tieger
16 testify as to what Kareem was told
17 beforehand, what his attorney was told,
18 what inducements were involved. He tells
19 me there is a written document with
20 Kareem about what happens if he doesn't
21 testify correctly, or the way they want
22 him to. And those things I can only get
23 through Mr. Tieger, and I'm asking the
24 Court to allow me to bring those things
25 out for the jury to understand.

1 THE COURT: All right. Are you
2 going to respond, or you have,
3 Ms. Shanahan?

4 MR. TIEGER: I can respond. There
5 is a written plea agreement that we
6 disclosed to the defense that I would be
7 happy to make a copy for Mr. Whalen.
8 It's there. It basically says that --
9 it's a lengthy document, so rather than
10 tell you what it says, I can give him a
11 copy of it.

12 But the basics are that he gave a
13 statement on May 17th that is a truthful
14 statement, that the facts in that
15 statement have been independently
16 verified by the police and corroborated.
17 That if he doesn't testify truthfully in
18 accordance with that statement, that all
19 the original charges could be
20 reinstituted against him, and then the
21 proffered statement could be used as
22 evidence in that new trial, and that's
23 signed by Mr. Issenman.

24 I believe myself, Mr. Gilbert, I'm
25 sure the Court signed it, it's a record

1 in the Kareem Gilbert case. So, I would
2 be happy to -- that's been disclosed. I
3 would be happy to give him a copy.

4 Secondly, Judge, in terms of the
5 statement that Mr. Gilbert gave, it's
6 common in a serious cases where you have
7 got cooperating witnesses, for a
8 prosecutor to be present at a statement
9 that that person gives because you want
10 to assess their credibility, look at
11 them, see what they are saying, does it
12 make sense, do I believe this person?
13 Because if you don't, then that's going
14 to determine which way the investigation
15 goes. If you do, that will determine
16 another path of where the investigation
17 goes. Everything that Mr. Gilbert said
18 on that day is on that tape.

19 There is also three other witnesses
20 who have testified. Detective Luke,
21 Detective Ballman, who could be
22 questioned about the content of what was
23 said, if there is any other inducements
24 or anything like that, and Detective
25 McGuffey was also present for that.

1 So, for those reasons, I think it
2 would be improper to call a prosecutor
3 that was present at a plea when that
4 proffered statement -- when the entire
5 conversation was tape recorded. And I
6 agree, I did ask questions during that
7 statement.

8 THE COURT: All right. Now, the
9 questions that he asked are on the
10 statement. How long have you known about
11 the fact that Mr. Tieger, Seth Tieger was
12 present during the questioning of the
13 witness? I think that's been information
14 you have had for some time.

15 MR. WHALEN: It is.

16 THE COURT: Okay.

17 MR. WHALEN: We just got the --

18 THE COURT: You have been knowing
19 that the prosecutor was present during
20 the questioning --

21 MR. WHALEN: No, we just got the
22 statement this week. But not only did we
23 not know until this week, and we did know
24 a couple of days ago, but we didn't know
25 the significance that that statement was

1 gonna play until Kareem Gilbert took the
2 stand and said it was all a lie. That
3 took on a different shade at that point
4 in time.

5 THE COURT: Okay. The statement is
6 already contained in there. You did not
7 know about the other witnesses? Officer
8 Ballman and the other witnesses who were
9 present during this statement?

10 MR. WHALEN: I do know, but Seth
11 Tieger made a deal with Kareem Gilbert
12 and his attorney, the police didn't. And
13 I want to be able to tell the jury what
14 Seth told him was going to happen if he
15 didn't come in and say the statement that
16 he first gave them, because I think the
17 jury is going to understand with that
18 kind of leverage, and somebody comes in
19 and says my daddy didn't do it, he knows
20 what he's doing to himself at that point
21 in time, and that shows the jury that
22 he's coming in and telling the truth.

23 THE COURT: Which is something you
24 can still argue. And now they are
25 telling you, you can even introduce the

1 agreement --

2 MR. TIEGER: Yes, Your Honor.

3 THE COURT: -- the State entered
4 into.

5 MR. WHALEN: I don't know, I
6 haven't seen it. But I want to be able
7 to tell the jury that Seth Tieger made
8 that deal with Kareem's attorney and they
9 sat down and talked.

10 THE COURT: That's the State. If
11 you were to provide that, doesn't the
12 statement --

13 MR. TIEGER: It speaks for itself
14 at that point.

15 THE COURT: Is it signed by you?

16 MR. TIEGER: It's either signed by
17 me or Ms. Shanahan, one of us.

18 THE COURT: I think that could be
19 accomplished, and you can make that
20 argument with that document provided.
21 So, I'm going to ask you to provide that
22 document.

23 MR. TIEGER: Yes, Judge.

24 THE COURT: I don't know how -- it
25 almost has to be stipulated to, because

1 --

2 MR. TIEGER: I understand.

3 THE COURT: -- you're resting by
4 stipulation.

5 MR. WHALEN: And I disagree with
6 the Court.

7 THE COURT: Okay. I'm saying that
8 you can bring in the document. You can
9 still make an argument without calling
10 him as a witness, because that would
11 force the Court to impose a mistrial
12 when, in fact, it is speculation. There
13 is nothing other than your speculation
14 that there may have been something
15 improperly said or done to induce
16 Mr. Kareem Gilbert.

17 MR. WHALEN: I'm not saying
18 anything improperly was done. I'm saying
19 it was properly done, but him and his
20 attorney listened to Mr. Tieger explain
21 the thing and then they signed the
22 document, and there were other things
23 that went on in getting him to sign that
24 document. And I think the jury needs to
25 know exactly what Kareem Gilbert had

1 threatening him when he came in here and
2 said daddy didn't do it.

3 THE COURT: Counsel, I'm gonna
4 overrule that. But at this point, you
5 can proffer whatever you would like to
6 put in the record about that.

7 MR. WHALEN: Well, I just did.

8 THE COURT: We'll call that a
9 proffer. I'm going to make sure for the
10 record, I'm not gonna grant that motion
11 for the retrial in order to call the
12 prosecutor as a witness because it causes
13 me to impose a mistrial in this matter.

14 So, at this time, would you like to
15 proffer what you think calling of Mr.
16 Tieger would accomplish for the defense?

17 MR. WHALEN: I want to call Seth
18 Tieger to indicate that he met with
19 Kareem Gilbert and Kareem Gilbert's
20 attorney to work out a plea bargain
21 whereby the case was -- I don't know
22 whether it was put on hold or dismissed,
23 but he understood if he didn't come in
24 and testify to what he told them in that
25 statement, they were going to initiate

1 another murder charge against him.

2 And I want to know what other
3 inducements may have been made before
4 they actually put it in writing to get
5 Mr. Gilbert's attorney to advise him to
6 take the deal and what Mr. Gilbert was
7 going to suffer if he walked into this
8 courtroom and did what he did the day
9 before yesterday.

10 THE COURT: All right. And, again,
11 is the statement something you don't
12 want, the plea agreement that was entered
13 into between --

14 MR. WHALEN: I do want it. I want
15 it to go to the jury.

16 THE COURT: All right. Then would
17 you agree to stipulate that is the
18 agreement?

19 MR. TIEGER: Yes, Your Honor.

20 THE COURT: So, that's going to
21 come in. That's going to be provided
22 like right now. Do you have it with you?

23 MR. TIEGER: I have got a -- I'm
24 going to have to get it. I have got --
25 our whole file is not over here, we'll

1 get it together. I mean, it's --

2 THE COURT: Do you want to go
3 forward with your other witnesses and
4 then take a break to get this exhibit
5 that they are talking about?

6 MR. WHALEN: I can do that.

7 THE COURT: Okay. And then we are
8 going to have lunch anyway, so it is
9 11:30. So, does that mean we are going
10 to be taking a long lunch until 1:00?

11 MR. TIEGER: Judge, I guess the
12 thought was to --

13 THE COURT: We would be adjourned
14 anyway?

15 MR. TIEGER: I don't know whether
16 they have got another witness or not.
17 They weren't sure when we talked as to
18 whether there is a --

19 THE COURT: I think we may -- I
20 think we should adjourn until you get the
21 document, because you're going to call
22 your witnesses and we were going to
23 adjourn for the day.

24 MR. WHALEN: Right.

25 THE COURT: So let's just have an

1 early lunch.

2 MR. TIEGER: That's fine.

3 THE COURT: It's lunchtime now.

4 They have until -- they have until
5 quarter till, is that 20 till, quarter of
6 one. Come back at --

7 MR. WHALEN: Can I be excused from
8 the room for a minute?

9 THE COURT: Yes. I'm going to
10 adjourn for recess. I'm sorry, for
11 lunch. Lunch recess. And when we come
12 back, all the documents will be in hand,
13 and your defense witnesses is going to go
14 forward.

15 MR. TIEGER: And I assume that all
16 the admonishments you gave previously
17 over the lunch hour --

18 THE COURT: Do you want me to give
19 them again?

20 MR. TIEGER: No, Judge, just as
21 long as the bailiff does that, that's
22 fine.

23 (Lunch recess.)

24 THE COURT: Do you want to bring in
25 the jury? They want me to advise them

1 that they do not have to worry about
2 having to remain past wednesday. Three
3 of them is going to have to leave, and
4 they are wanting me to -- they want to
5 hear that from me, so they can be assured
6 they will not be forced to remain past
7 wednesday. I guess that's wednesday
8 morning, if matters are not concluded.

9 (The jury entering the courtroom at
10 1:10 p.m.)

11 THE COURT: You may all be seated.
12 Before we commence with testimony, I do
13 want to assure the jury that those of you
14 who have to leave as of wednesday morning
15 will be permitted to do so. We are not
16 going to force anyone to remain in jury
17 duty, because I know two of you are --
18 three of you have already advised us in
19 advance during voir dire, and so that's
20 why we have alternates, in case that does
21 happen.

22 All right. So with that, we are
23 ready to proceed with the defense case in
24 chief.

25 MS. SHANAHAN: I believe, Your

1 Honor, that I have to reread the
2 statement.

3 THE COURT: Yes. Reread the
4 stipulation that we already agreed to.
5 So, if the state is going to enter
6 documents into evidence, and there are
7 stipulations that we would like you to
8 hear, although you'll get this in writing
9 when we have jury instructions also.

10 MS. SHANAHAN: Your Honor, the
11 State and defense have agreed to
12 stipulate to the five prior convictions
13 of the defendant that are contained in
14 Count 2 of the indictment, the weapon
15 under disability charge. Those counts
16 are -- or excuse me, those prior
17 convictions include possession of drugs,
18 in B0309177 on February 6, 2004;
19 preparation of marijuana for sale in
20 B0006899 on December 14th of 2000; the
21 illegal processing of drug documents in
22 B955989 on October 17 of 1995; aggravated
23 trafficking in drugs in B929170 on
24 March 19th, 1993; and drug abuse in
25 B911528 on May 1st, 1991.

1 The defense has agreed that it is,
2 in fact, Ruben Jordan, the person who was
3 named in the indictment that was
4 convicted of these prior charges alleged
5 in the weapon under disability charge.

6 And with that stipulation, and the
7 entry of all the State's evidence that we
8 have already discussed during the break,
9 the State would rest, Your Honor.

10 THE COURT: So we are admitting
11 State's Exhibits 1 through 31, and those
12 stipulations. So, with that, is the
13 defendant ready to proceed?

14 MS. WILLIAMS: Your Honor, the
15 defense is going to call Leshuande
16 Ramsey.

17 THE COURT: Okay. She's in the
18 hallway. So, all your witnesses are in
19 the hallway. We still have a continuous
20 motion for separation that anybody who's
21 in this courthouse -- first of all, turn
22 off cell phones. Some of you weren't
23 here earlier, so any cell phones have to
24 be turned off now and taken out of
25 pockets and out of hands, otherwise they

1 will be seized.

2 Also, you cannot discuss or
3 disclose anything that is occurring
4 during this trial by stepping in the
5 hallway, talking to witnesses. Okay. If
6 you would have a seat up here. If you'll
7 raise your right hand to be sworn.

8 LESHUANDE RAMSEY,
9 having been first duly sworn, was examined and
10 testified as follows:

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. If you could state your name and
14 spell your last name for the record?

15 A. Leshuande Ramsey,
16 L-E-S-H-U-A-N-D-E, Ramsey, R-A-M-S-E-Y.

17 Q. And you're familiar with a Ruben
18 Jordan, are you not?

19 A. Yes, I am.

20 Q. Okay. And how do you know Mr.
21 Jordan?

22 A. I have been knowing Mr. Jordan all
23 my life. Presently, he's my fiance.

24 Q. Okay. And do you live with Mr.
25 Jordan?

1 A. Yes.

2 Q. Where is that at?

3 A. Our last address was McGregor.

4 Q. McGregor. And where were you
5 living on October 31st, 2008?

6 A. We were living on Hearne in
7 Avondale.

8 Q. Okay. And at that time, how long
9 had you lived with Mr. Jordan?

10 A. About three-and-a-half years.

11 Q. Three-and-a-half years. And do you
12 remember what you were doing the night of
13 October 31st, 2008?

14 A. The night of 2008, we got the kids
15 dressed for Halloween, sent them out for
16 Halloween. We had Ruben spent some time in our
17 room, Kareem was upstairs in his room. Um,
18 later on that night, maybe about something to
19 ten, Ruben told me that it's getting late, the
20 girls haven't returned from trick or treating,
21 where are they. A little bit after that, Kareem
22 had some company. The kids came in, maybe like
23 10:15. A little bit after that, some more of
24 Kareem's friends came over.

25 Q. So you were all home this night on

1 October 31st, 2008?

2 A. Yes, ma'am.

3 Q. And what was everyone doing at
4 home? I know you said the kids had come back
5 from trick or treating?

6 A. Earlier, Kareem and Mr. Jordan was
7 watching television. Ruben fixed a breaker for
8 the whole family. I was in my bedroom watching
9 television. Later on that night we all watched
10 movies, Halloween, we watched Saw, I don't know
11 what, first Saw, second Saw.

12 Q. And Mr. Jordan was home this entire
13 time?

14 A. Yes, ma'am.

15 Q. Okay. And you're -- obviously, you
16 have mentioned Kareem a couple times, that's Mr.
17 Jordan's son, correct?

18 A. Yes, ma'am.

19 Q. Okay. And he knew about the legal
20 troubles that Kareem was having during this
21 time, right?

22 A. Yes, ma'am.

23 Q. Did he attempt to help Mr. Gilbert
24 in any way? Did he attempt to help him get an
25 attorney? Did he tell him to turn himself in?

1 what kind of conversations did they have
2 regarding that?

3 A. Several times Mr. Jordan had went
4 down to talk to some attorneys for Kareem to
5 turn hisself in. Kareem asked his father on one
6 occasion, not today, Mr. Jordan went back down
7 to talk to the attorneys and told Kareem today
8 is the day that you have to turn yourself in.
9 That day, I'm not for sure what day it was, but
10 Kareem left the house.

11 When Mr. Jordan went to talk to the
12 attorneys, he told me that he was going out to
13 get a cigar and he never returned.

14 Q. Okay. So, basically, did Ruben
15 give him an ultimatum, you said, today has to be
16 the day?

17 A. Yes, he did, today has to be the
18 day that you turn yourself in.

19 Q. And if you didn't, what was Mr.
20 Jordan going to do?

21 A. That he had to turn him in. He was
22 going to turn him in.

23 Q. So if Kareem didn't turn himself
24 in, Ruben was going to turn him in?

25 A. Yes.

1 MS. WILLIAMS: No further
2 questions, Your Honor.

3 THE COURT: Cross?

4 CROSS-EXAMINATION

5 BY MR. TIEGER:

6 Q. Ms. Ramsey, have you ever been in
7 trouble with the law at all?

8 A. I have one misdemeanor.

9 Q. What was that for?

10 A. Disorderly conduct.

11 Q. Okay. And you keep calling
12 somebody Mr. Jordan. Do you see this person
13 here today in court?

14 A. Yes, sir.

15 Q. Where is he?

16 A. Right there.

17 Q. Okay. Right here?

18 A. Yes, sir.

19 Q. The one smiling right here?

20 A. Yes, sir.

21 Q. Okay. And then what do you call
22 him, Ms. Ramsey?

23 A. I call him Ruben.

24 Q. You do?

25 A. Yes.

1 Q. Okay. Does he have any other names
2 he goes by?

3 A. He goes by Red.

4 Q. Red. How long has he had that
5 nickname, Ms. Ramsey?

6 A. I have been knowing Mr. Jordan
7 since he was seven years old. He used to have
8 red hair, so he's been going by that name all
9 his life.

10 Q. How old are you, Ms. Ramsey, if you
11 don't mind me asking?

12 A. Thirty-eight.

13 Q. How old is Red?

14 A. Thirty-eight.

15 Q. Okay. And you have known him since
16 he was seven?

17 A. Yes.

18 Q. But you recently started, did you
19 call it dating?

20 A. Yes, sir.

21 Q. Okay. And when was that?

22 A. Years ago, but I also dated him
23 when we were about 14 years old.

24 Q. And then you're aware he's been to
25 prison a number of times?

1 A. Yes, sir.

2 Q. Okay. And do you have children?

3 A. Yes, I do.

4 Q. How old are your children?

5 A. My children are 20, 19, 18, 14 and

6 11.

7 Q. And the kids that were trick or

8 treating, which ones of those were trick or

9 treating?

10 A. At the time my nine-year-old and --

11 I believe she was nine.

12 Q. She's 11 now?

13 A. Yes.

14 Q. But nine then?

15 A. Uh-huh.

16 Q. Okay. Who else?

17 A. And my 14-year-old that was, what,

18 12.

19 Q. Do you know the hours for trick or

20 treating, Ms. Ramsey?

21 A. I believe it started at six.

22 Q. Till?

23 A. Until nine.

24 Q. Okay. I thought it was eight.

25 A. Well, I thought it was nine.

1 Q. But you're saying it was somewhere
2 around 10:00, and you had not -- they left at
3 what, six?

4 A. Yes, sir.

5 Q. And you hadn't heard from them for
6 around four hours. This is a nine-year-old and
7 12-year-old out on the street at night in the
8 dark?

9 A. Well, they had a ride with a
10 neighbor. They went out trick or treating with
11 a neighbor.

12 Q. To another neighborhood?

13 A. Yes, sir.

14 Q. Okay. But you hadn't heard from
15 them in around four hours?

16 A. Yes, sir.

17 Q. Had no idea where they were other
18 than they were with a neighbor?

19 A. Exactly. Mr. Jordan got concerned,
20 asked me where are your children at, why haven't
21 they came back? When the kids came back with my
22 neighbor --

23 Q. So you didn't get concerned?

24 A. Yes, sir, I was concerned.

25 Q. Okay. When you said he got

1 concerned, not you?

2 A. Well, he asked me.

3 Q. So you really hadn't thought
4 anything about it, because you said you were in
5 the bedroom with Mr. Jordan, right, Ms. Ramsey?

6 A. Yes, sir.

7 Q. Okay. And what were you doing in
8 the bedroom?

9 A. We was watching television.

10 Q. Okay. There is a -- do you have
11 any other televisions in your house besides that
12 one?

13 A. Yes, I do.

14 Q. Where is it?

15 A. In my living room.

16 Q. Okay. Any other ones?

17 A. Yes, I do.

18 Q. And where is that?

19 A. I had a second living room.

20 Q. And where is that?

21 A. Next to my original living room.

22 Q. On the first floor?

23 A. Uh-huh.

24 Q. And the room Kareem was in, what
25 room was that in?

1 A. That was on the third floor.

2 Q. There is no TV up there?

3 A. Yes, sir, there was.

4 Q. Well, you didn't mention that to
5 the jury, Ms. Ramsey, did you?

6 A. No.

7 Q. Why not?

8 A. It wasn't asked.

9 Q. Okay. Because I thought I asked
10 you how many TVs you had, and you said you had
11 three there on the first floor.

12 A. Okay. I do have three on the first
13 floor, and also one on the third floor.

14 Q. Okay. And what kind of cable do
15 you have in your house?

16 A. I had a satellite dish.

17 Q. Okay. Do you work?

18 A. At the present time, no, but then I
19 did.

20 Q. All right. What did Red do during
21 the day?

22 A. What did Ruben do during the days?
23 He would find little work. He's a plumber,
24 sometimes he would work with his brother. He
25 didn't have a permanent job. He started school,

1 going to college.

2 Q. Have you spoken to Mr. Jordan since
3 he's been arrested on May 18th of 2010?

4 A. Yes, sir.

5 Q. How many times would you say you
6 have spoken to him?

7 A. I have visited Mr. Jordan since
8 he's been locked up every day, except for maybe
9 twice.

10 Q. And you have written him as well?

11 A. No, sir.

12 Q. But you speak every day?

13 A. Yes, sir.

14 Q. Either on the phone or in person?

15 A. Yes, sir.

16 Q. Have you spoken about your
17 testimony at all?

18 A. No, sir. I told Mr. Jordan that I
19 would not speak about the testimony because I
20 didn't want to mess up any chances of me getting
21 up on this witness stand.

22 Q. Okay. So, in terms of how it all
23 got started that you were a potential alibi
24 witness, did you contact Mr. Whalen or Ms.
25 Williams, or how did that come about?

1 A. It actually came about because of
2 Kareem's case, that I was a witness for Kareem.

3 Q. And you alibied Kareem, and you
4 said that he could not have done that murder
5 because he was with you?

6 A. All day in pajamas.

7 Q. And you said that -- you're saying
8 that there is no way Kareem Gilbert -- he was in
9 the house at -- do you know what time the murder
10 happened?

11 A. From my understanding, when I
12 talked to the detective the day that Ruben was
13 arrested, she told me that it was about 10:00.

14 Q. Ten at night?

15 A. Uh-huh.

16 Q. Okay. So, you're saying that Mr.
17 Jordan nor Mr. Gilbert could have done this
18 because they were with you at 10:00?

19 A. Yes, sir.

20 Q. Okay. When was the last time you
21 saw Mr. Jordan that night? For instance, was
22 there any time period, Ms. Ramsey, that he was
23 out of your sight?

24 A. No, sir.

25 Q. So you're telling the jury that the

1 whole night that night, from whenever till
2 whenever, you never left his sight and he never
3 left yours?

4 A. No, sir.

5 Q. And the same thing with Mr.
6 Gilbert?

7 A. Mr. Gilbert would go upstairs.
8 Like I said, he had company that night. He had
9 two male friends that came over, a female friend
10 that came over, and also his sister that came
11 over.

12 Q. And he greeted his company in his
13 pajamas?

14 A. Yes, he did.

15 Q. Okay. And stayed in his pajamas,
16 right?

17 A. Yes, sir.

18 Q. And you're certain that he never
19 left your home that evening at all?

20 A. I'm positive.

21 Q. The street that you lived on at the
22 time was Hearne, correct?

23 A. Yes, sir.

24 Q. And what does Hearne run into?

25 A. Burnet.

1 Q. And you talked about Kareem's legal
2 troubles, I think is what -- the way the
3 question was phrased?

4 A. Uh-huh.

5 Q. What did you mean by that, legal
6 troubles, Ms. Ramsey?

7 A. Well, from my understanding of the
8 beginning, that Kareem had ran away from
9 Hillcrest and that his father had to take care
10 of him getting back into Hillcrest in the
11 beginning, but detectives let me know that
12 Kareem was in trouble with a murder.

13 Q. When was the first time you knew
14 that Kareem was wanted for a murder?

15 A. When detectives knocked on my door.

16 Q. Which was when?

17 A. I can't tell you a date.

18 Q. And was it before Halloween of
19 2008?

20 A. I'm not for sure.

21 Q. Could it have been before Halloween
22 of 2008?

23 A. I couldn't -- I couldn't tell you.

24 Q. Okay. And then you knew Kareem was
25 wanted for murder?

1 A. Yes.

2 Q. But at the very least, you knew a
3 person that had run away from a facility was --
4 you were harboring him in your house?

5 A. Which Mr. Jordan was trying to take
6 care of the situation. I didn't think that it
7 was really a big deal about him being there when
8 Mr. Jordan was taking him down to turn himself
9 in.

10 Q. Okay. And you're telling the jury,
11 Ms. Ramsey, that this whole time that all this
12 was going on that your understanding was that
13 you knew nothing about a murder?

14 A. No, I didn't.

15 Q. And Mr. Jordan may have known about
16 a murder but wasn't telling you, correct?

17 A. I'm not for sure.

18 Q. Well, would that be fair to say,
19 that Mr. Gilbert and Mr. Jordan may have talked
20 about that it was more than just running away
21 from Hillcrest and they didn't tell you?

22 A. Maybe, I don't know.

23 Q. Because certainly he keeps things
24 from you, does he not, Ms. Ramsey?

25 A. I mean, I haven't had a problem

1 with him keeping things from me.

2 Q. Do you know if he smokes crack?

3 A. Yes, I do.

4 Q. Okay. And does he?

5 A. He has recently stopped smoking
6 crack, got hisself into college, was working.

7 Q. How recently?

8 A. Some months before you guys came
9 and swabbed his mouth and did that kind of thing
10 to him, he had stopped. He was getting his life
11 together, going to Kaplan College for
12 electrician.

13 Q. Okay. Which was when, when you say
14 that he stopped smoking crack, Ms. Ramsey?

15 A. He's been locked up for nine
16 months. I would say maybe four or five months
17 before.

18 Q. Okay. So he got locked up on
19 May 18 of 2009.

20 A. Uh-huh.

21 Q. So, let's say it's eight months?

22 A. Uh-huh.

23 Q. So, you're saying several months
24 prior to that he quit?

25 A. Yes, sir.

1 Q. So, in January/February of '09 he
2 was still using crack? In 2008, he was using
3 crack?

4 A. I would say prior to you guys
5 coming to pick him up from the house that he had
6 stopped about four or five months, I'm not for
7 sure of the dates.

8 Q. Okay. Where would he buy his
9 crack, Ms. Ramsey?

10 A. I have no clue.

11 Q. Well, I mean, when he bought his
12 crack, did he ever tell you he bought it up on
13 Burnet?

14 A. I have no clue where Mr. Jordan
15 would buy his crack. I don't smoke crack, so I
16 don't deal with them kind of people.

17 Q. Well, I mean, you deal with him and
18 he smokes crack?

19 A. I never went with him to buy crack,
20 so...

21 Q. How did you know that he was using
22 crack then if you never were with him? Did you
23 ever see him smoke crack?

24 A. I have never seen him smoke crack.

25 Q. How do you know he was on crack and

1 got off of it?

2 A. Because he let me know that he
3 smokes crack.

4 Q. Okay. Tell us how he let you know
5 that.

6 A. I mean --

7 Q. Is it pretty obvious?

8 A. We had discussions, yes, it's
9 pretty obvious that you, you know, that you have
10 money and it's gone and you know. I got family
11 members that smoke crack, you know, so I know
12 when somebody is smoking crack.

13 Q. And is there a difference in his
14 personality when he is smoking crack?

15 A. It's pretty much quiet.

16 Q. Quiet. Okay. If somebody
17 described him as like deacon one night, like
18 real hyper and all that, have you ever seen him
19 like that on crack?

20 A. No, he's pretty much quiet.

21 Q. Mellows him out?

22 A. (Nods affirmatively.)

23 Q. Is that what you're saying?

24 A. Yes, sir.

25 Q. What I'm just trying to get at,

1 Ms. Ramsey, that you say you know when he's on
2 it, for instance, could he be on it every day?
3 when you're addicted to crack, it's something
4 that you have to smoke all the time, would you
5 agree?

6 A. No, I wouldn't agree.

7 Q. Okay. How often would you say he
8 smoked it back in 2008, in early 2009?

9 A. Sometimes I would not even know
10 that he done smoked, so I don't know.

11 Q. So it's fair to say that he hides
12 things from you, is that correct, Ms. Ramsey?

13 A. Probably smoking crack, yeah.

14 Q. Is there anything else?

15 A. Not that I know of.

16 Q. Because you wouldn't know if he
17 were hiding it from you, correct, Ms. Ramsey?
18 Just like the crack, you don't get up in his
19 business all the time, do you?

20 A. I don't know what you mean by that.

21 Q. You said you were at work, he's
22 somewhere during the day, you have no idea where
23 he is, you don't know what he's doing, you don't
24 know what he's smoking, you don't know who he's
25 with or what he's doing, fair to say?

1 A. That's correct.

2 Q. And there is a large part about him
3 that you really don't know about, correct,
4 Ms. Ramsey, is that fair to say?

5 A. I know a lot about him, but, I
6 mean, if he leaves the house when I'm at work,
7 you know, I come home at four, 4:30 every day.

8 Q. And it's fair to say that if you
9 come home, he would not disclose to you, hey,
10 guess what, I walked up on Burnet, I met Kenny,
11 I got a 20-cent piece and I smoked some crack.
12 would he ever tell you that, Ms. Ramsey?

13 A. No, sir.

14 Q. Okay. So, there were things that
15 he was hiding about himself to you, fair to say?

16 A. I wouldn't say hiding, but I don't
17 think he would tell me that, hey, I had smoked
18 crack today.

19 Q. Okay. Well, tell me what word you
20 would use to define it, if it's not hiding it,
21 keeping it secret from you?

22 A. I would say that's his personal
23 preference of what he do when he go out and
24 smoke crack.

25 Q. I mean, wasn't it important to you,

1 Ms. Ramsey, you have got a number of kids, you
2 were working, and I'm sure money is tight, and
3 he is out smoking crack, spending his money, not
4 doing anything during the day, didn't that
5 irritate you at all?

6 A. Very much so.

7 Q. Okay. And did you argue about
8 that?

9 A. We done discussed it.

10 Q. Okay. Because even Kareem said
11 that he knew that his father used crack. It
12 wasn't a secret to him, or it sounds like really
13 to anybody. Do you know if there is drug
14 dealers that stand up on Burnet and sell crack?

15 A. All day long.

16 Q. Okay. And how do you know they
17 were drug dealers?

18 A. I lived in the neighborhood.

19 Q. So, it's fair to say that crack
20 dealers set up shop, so to speak, by hanging out
21 on the street and then a buyer, like your
22 fiance, would approach and there would be a
23 hand-to-hand transaction between cash and a rock
24 of cocaine?

25 A. I have never seen that, but that

1 goes on every day.

2 Q. And if you want to get crack
3 cocaine, it's known that a place to get that is
4 on Burnet from the crack dealers, fair to say?

5 A. That place and several others.

6 Q. And you're telling the jury,
7 Ms. Ramsey, that in all the times in the, gosh,
8 200 plus times that you visited him, you have
9 never spoken once about that night, what you
10 did, don't you remember this, this is what we
11 did, this is what I'm going to say? He's never
12 asked you, and you have never told him?

13 A. I have made sure that Mr. Jordan
14 would not speak to me about the case, because I
15 did not want to mess up getting on this witness
16 stand. So, if he did want to say anything to
17 me, I would stop him, I don't want to hear it.
18 I know that they listen to the phone calls, so,
19 no, don't say anything to me about this case.

20 Q. Okay. So, he has tried to bring it
21 up?

22 A. Somewhat, but --

23 Q. Tell me about how he's tried to
24 bring it up, Ms. Ramsey.

25 A. I wouldn't allow him. I didn't

1 want to hear it. I'll put the phone down. I
2 don't want to hear nothing about this case,
3 because I didn't want to mess up getting on this
4 stand.

5 Q. Okay. But you're saying that he
6 tried to talk to you about it on a number of
7 occasions about that night, about your alibi?

8 A. Oh, no, not about an alibi.
9 Actually, I don't know what he was going to try
10 to say, but I was not going to allow him to say
11 anything to me.

12 Q. In any way, shape or form about the
13 situation that we are in here today?

14 A. No, sir.

15 Q. Would you agree with me,
16 Ms. Ramsey, to get from where you live on Hearne
17 down to Republic and Elder is a very short
18 distance, maybe less than a 10-minute car ride?

19 A. Yes, in a car.

20 Q. Okay. Especially on an evening or
21 time when there is very little traffic, you
22 could just go straight from Hearne to Burnet?

23 A. Ten, 15 minutes probably.

24 Q. Down Burnet, down the hill, maybe
25 cut over Liberty, straight into Over-the-Rhine

1 would be a very short car ride to get there and
2 get back?

3 A. Yes.

4 Q. Fair to say?

5 A. Yes, sir.

6 Q. And you're saying to the jury that
7 Mr. Jordan cared very much about his son and his
8 legal situation?

9 A. Very much so.

10 Q. And he wanted to take it on himself
11 too, you said, try to clear up the legal
12 difficulty that he was in, you said, by trying
13 to get an attorney, is that what you said?

14 A. Yes, sir.

15 Q. But that he was very much involved
16 in solving Kareem's legal problems, fair to say?

17 A. Yes, sir.

18 MR. TIEGER: Just one moment,

19 Judge. That's all, Judge. Thank you.

20 THE COURT: Anything else, Counsel?

21 REDIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Ms. Ramsey, regardless of what Mr.
24 Jordan does or Ruben does or does not share with
25 you, he didn't have to share with you where he

1 was that night because you were with him the
2 entire time, correct?

3 A. Yes, ma'am.

4 MS. WILLIAMS: No further
5 questions.

6 THE COURT: All right. Thank you,
7 ma'am. You may step down. Do you have
8 another witness?

9 MR. WHALEN: Can I have a moment,
10 Your Honor?

11 THE COURT: Yes.

12 MR. WHALEN: Could we approach a
13 moment, Your Honor?

14 THE COURT: Yes.

15 (Unreported sidebar conference.)

16 THE COURT: Rather than recess, we
17 are waiting for the next witness who is
18 on their way. So, just continue to relax
19 and talk among yourselves. Kind of
20 relax, recess mode.

21 All right. So you want to continue
22 with the witness, Counsel? All right.
23 On the record, and who's the next defense
24 witness?

25 MS. WILLIAMS: The defense is going

1 to call Detective Kurt Ballman.

2 THE COURT: All right, Detective
3 Ballman. Detective, you're still under
4 oath, so I don't need to give you the
5 same oath.

6 THE WITNESS: Yes, ma'am.

7 DETECTIVE KURT BALLMAN,
8 having been first duly sworn, was examined and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Thanks, Detective, for coming in on
13 your day off.

14 A. Yes, ma'am.

15 Q. I just have a few extra questions
16 for you, Detective. I know that you had
17 testified -- I'm sorry, I don't remember which
18 day it was that you testified -- that you had
19 learned from other officers on the scene that
20 Victor Davis had had an argument with Shawn
21 Gilbert, correct?

22 A. That is correct.

23 Q. And you didn't see this yourself
24 though?

25 A. I wouldn't call it -- I don't know

1 if it was an argument. I believe my testimony
2 was I believed Mr. Gilbert was influencing or
3 intimidating the witness.

4 Q. Okay. And you also said that once
5 you found out he was Kareem's brother you did
6 interview him?

7 A. Yes.

8 Q. Okay. Now, I know Detective Luke
9 testified earlier today that Shawn didn't really
10 give that much information. Did he give any
11 further information to you?

12 A. No. He basically denied being
13 involved and his brother being involved and
14 things like that.

15 Q. Was Shawn pursued any further or
16 was he dropped from your suspect list at that
17 point?

18 A. As far as which case, ma'am?

19 Q. As far as Victor Davis's murder.

20 A. Victor Davis was Jenny Luke's case.
21 I don't -- at the time I interviewed Kareem on
22 the 31st in our mind he was -- still might be
23 still somehow involved.

24 Q. Okay. On December 31st, 2008, you
25 and Detective Schare interviewed Kareem Gilbert,

1 correct?

2 A. That's correct.

3 THE COURT: Would you repeat the
4 date again, on what day?

5 MS. WILLIAMS: December 31st, 2008.

6 THE COURT: Okay.

7 Q. And did you get a chance to review
8 the Crimestopper tips from either the Brian
9 Austin or the Victor Davis murder?

10 A. At some point I did. I can't say I
11 have looked at it in some time.

12 Q. Okay. Do you remember how many
13 tips there were?

14 A. No, ma'am.

15 Q. Okay. Do you remember who the
16 tipsters ID'd as the offenders in the case?

17 A. There was, I believe, at one point
18 a tip that Shawn --

19 MR. TIEGER: Objection.

20 THE COURT: Objection to the tip?

21 MR. TIEGER: Judge, what a
22 Crimestopper -- anonymous Crimestopper
23 said.

24 THE COURT: Counsel?

25 MS. WILLIAMS: It's in the

1 preceding interview that he had with
2 Kareem Gilbert on the Crimestopper tips
3 as to who was ID'd by those people.

4 THE COURT: Who was ID'd in the
5 interview with -- I'm confused again.
6 What are you trying to get in here?

7 MS. WILLIAMS: This detective and
8 Detective Schare interviewed Kareem
9 Gilbert.

10 THE COURT: Yes. Was he one of the
11 tips involved?

12 MS. WILLIAMS: Yes.

13 THE COURT: Okay. So you need to
14 refer to it as a tip. It's just an
15 interview with him, was it not?

16 MS. WILLIAMS: It was an interview
17 where they were asking him about the tips
18 and identifying Mr. Gilbert.

19 THE COURT: So these are questions
20 contained in the transcript?

21 MS. WILLIAMS: Correct.

22 THE COURT: Overruled. In response
23 to questions, so it's overruled. Go
24 ahead. I don't remember if you remember
25 the question, Detective. Why don't you

1 ask it again.

2 Q. Do you remember who was ID'd in
3 those tips?

4 A. I believe at one point we did have
5 one tip that ID'd Shawn Gilbert as somehow being
6 involved.

7 Q. If I can show you, Detective, also
8 transcripts from an interview starting at line
9 23 and going to line 2, if you could read that,
10 please.

11 A. It says: We have got about eight
12 Crimestopper tips in here and all of them name
13 you. And one of them name -- two of them name
14 your brother as a person that -- or a person
15 that shot Victor Davis.

16 Q. Okay. So of eight Crimestoppers
17 tips, six name Kareem Gilbert and two named
18 Shawn Gilbert?

19 A. As being involved, yes.

20 Q. And none of those tips were Ruben
21 Jordan?

22 A. No, ma'am.

23 Q. Okay. You were also involved in
24 the interview of Kareem Gilbert on May 17, 2010,
25 correct?

1 A. Yes, ma'am.

2 Q. And in that interview you made the
3 statement, Victor told me that Shawn was telling
4 him to keep his mouth shut about it, so Victor
5 Davis actually told you that he was being
6 threatened or coerced?

7 A. Yes. When we subsequently did talk
8 to Mr. Davis, that's what was going on up at the
9 bank.

10 Q. Okay. Did Victor ever tell you
11 that Ruben was harassing him or just that --

12 A. He was -- his main concern was more
13 with his sister and his family. My
14 understanding, talking to Victor Davis, is he
15 was receiving threats from the Gilbert family
16 and that he had pretty much written himself off
17 as probably going to get shot.

18 Q. So he just said the Gilbert family,
19 he didn't identify specific people?

20 A. That's correct.

21 Q. Other than this one time he had
22 said Shawn?

23 A. That's correct.

24 Q. On those Crimestopper tips,
25 Detective, was any reward or compensation paid

1 to the people who made those tips, if there was
2 an arrest?

3 A. I don't know that, ma'am.

4 MS. WILLIAMS: Okay. No further
5 questions, Your Honor.

6 THE COURT: All right. You may
7 recross.

8 MR. TIEGER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. TIEGER:

11 Q. Detective Ballman, with regard to
12 the statement that Kareem Gilbert gave on, I
13 believe it was May 17th of 2009?

14 A. Yes, sir.

15 Q. Excuse me, 2010, the way this
16 scenario unfolded to the best of my
17 recollection, you were set for trial on Mr.
18 Gilbert. He, Mr. Issenmann, approached Ms.
19 Shanahan and myself that Kareem wanted to tell
20 the truth about what happened to Victor Davis?

21 A. Yes.

22 Q. And either that day or the next day
23 Mr. Gilbert was taken to homicide?

24 A. I believe the day the trial was
25 going to start this information came forward.

1 we delayed the beginning of the case. And in
2 the following day, we interviewed Kareem
3 Gilbert, if my memory serves correctly.

4 Q. And I believe you were there with
5 Detective Luke and Detective McGuffey, and Ms.
6 Shanahan and I were there as well in an
7 interview room with Mr. Issenman and Mr.
8 Gilbert?

9 A. That's correct.

10 Q. And would it be fair to say,
11 Detective Ballman, that you have done these type
12 of interviews of cooperating witnesses,
13 co-defendants, people like that before?

14 A. Yes.

15 Q. On a number of occasions?

16 A. Yes.

17 Q. And would it be fair to say,
18 Detective Ballman, that when you're
19 interviewing, and I think you and Detective Luke
20 were the lead interviews in that, I think I
21 asked a few questions and Detective McGuffey
22 asked a few questions as well, that you're
23 trying to get as much detail from Mr. Gilbert,
24 as much specificity about what he has to say?

25 A. Yes.

1 Q. About his own involvement in his
2 own crime and either his own involvement or what
3 he's saying this other person did, in this case
4 Mr. Jordan?

5 A. Yes.

6 Q. Is there a reason that you go into
7 so much detail with a cooperating individual
8 instead of just saying okay, you say it was Mr.
9 Jordan, we believe you?

10 A. Fact checking is why we do it. We
11 know certain things. One of the things, I have
12 a younger partner I'm breaking in now that I
13 tell him, we learn certain things from the crime
14 scene, we learn certain things from witnesses,
15 but we never know the whole story. The only
16 person in the room that ever knows the whole
17 story is the individual that committed the crime
18 or committed the act.

19 So the certain -- we ask certain
20 key questions and, you know, see if he responds.
21 For instance, if the guy shot with a .22, we
22 might ask what gun did you use? And he might
23 say I used a .22. Well, that would be in line
24 with what we know. Or if he says I used a .45,
25 now we got a problem in his statement. He may

1 be giving a false confession, he doesn't know or
2 whatever.

3 Q. For instance, in this case, did you
4 go through the facts and circumstances of the
5 Austin murder with Mr. Gilbert in terms of how
6 it happened, the weapon he used and so forth?

7 A. Yes.

8 Q. And my recollection of the
9 statement, and the jury is going to have that is
10 that he said that he got into a verbal
11 altercation. Did that match with what Victor
12 Davis said?

13 A. Absolutely.

14 Q. That he left and came back with a
15 weapon?

16 A. Yep.

17 Q. Did that match?

18 A. Yep, that he got hit in the face
19 with a sandwich and the caliber, the weapon he
20 used, matched the shell casings we had at the
21 scene which is something probably only the
22 shooter with know and the police know who
23 collected shell casings.

24 Q. And the fact that he, Mr. Austin,
25 turned around and ran, but Mr. Gilbert continued

1 to chase him and shoot him as he fell in the
2 street?

3 A. Exactly like Victor Davis told.
4 Even to the point where he knew where Victor
5 Davis was running. Victor Davis told us he fled
6 as soon as the shooting, the gun came out, he
7 ran along a Cadillac SUV. Kareem Gilbert says
8 he ran along and he says I thought about chasing
9 him down and shooting for a second, but then I
10 spared him. And he said I could have caught him
11 because Victor Davis was injured in the war, the
12 Gulf war, had a bum leg and he said I could have
13 caught him easily, but I decided to let him go.

14 Q. And in terms of like talking to
15 witnesses, do you always believe what a witness
16 or a defendant tells you, or is that the reason
17 that you ask for specificity? For instance,
18 Kareem Gilbert would have come in, and in your
19 experience, training and background in
20 interviewing defendants and suspects come in and
21 try to pull one over on you in terms of just
22 tell you what you wanted to hear, would you have
23 told him, hey, you can say what you want, but we
24 are not going to use you now?

25 A. Yes. A lot of times we have that

1 with what we call people that call from the
2 jail, you know, people that want to be a witness
3 or in a pod with a guy locked up or something.
4 If they are not, you know, if a lot of time
5 those individuals want to add extra stuff into
6 the story and a lot of times you kind of put
7 them aside because you kind of are getting the
8 feeling they may not be, you know, they may be
9 enhancing or whatever to make the story better.

10 Q. And I understand in this case,
11 Detective Ballman, that sometimes when there is
12 an incentive, you kind of look at this to see
13 whether they are being honest or not.

14 In this particular case, if Kareem
15 Gilbert was given a plea deal that if he
16 testifies, for instance, in this case, he said
17 none of what he told us that day was true, that
18 that plea agreement could be torn up and he's
19 back to square one on his original murder
20 charges which could result in a lot more time
21 for him?

22 A. Yes.

23 Q. And you're aware of that plea
24 agreement?

25 A. Yes, sir.

1 Q. And would you look at that as well
2 to see if somebody is telling the truth as far
3 as there is something out there, a detriment to
4 him if he doesn't testify truthfully?

5 A. That's correct.

6 Q. And you felt comfortable at the
7 time, and do you still feel comfortable that's
8 what he told you on May 17th in terms of his
9 confession to the Austin murder and his story
10 about what happened on the evening of the 31st
11 of October?

12 MR. WHALEN: Objection, Your Honor.

13 THE COURT: Basis?

14 MR. WHALEN: How he feels has
15 nothing to do with the issues here. He's
16 entitled to his feelings, but it doesn't
17 have to come out in the courtroom.

18 THE COURT: Overruled.

19 A. I believe -- I believe that Kareem
20 Gilbert that day was telling us the truth based
21 on the details of the Austin shooting, Brian
22 Austin shooting that he gave matched fairly well
23 with the description that Victor Davis -- or
24 Victor Davis had given us in that case and what
25 we had at the scene, so I believed he was being

1 honest at that point and fairly accurate as to
2 what happened.

3 Q. And if you felt in any way that a
4 witness is trying to pull one over on you, or
5 tell you what you want to hear, does that matter
6 at all? Is it solve, solve, solve, solve, or is
7 it like hey, I don't care what you're saying, we
8 want to do the right thing here?

9 A. Well, yeah, I want to put the right
10 person in jail for the incident. Despite what
11 anybody says, I'm not looking to just put
12 anybody in jail. I want to put the correct
13 people in jail for the things that they have
14 done. I don't want to put an innocent person in
15 jail.

16 MR. TIEGER: Just one moment,
17 Judge. Nothing further, Judge.

18 THE COURT: Do you have something
19 else?

20 REDIRECT EXAMINATION

21 BY MR. WHALEN:

22 Q. Officer, Kareem Gilbert gave you
23 details that were very explicit because he was
24 there, he committed the crime, am I correct?

25 A. Yes, sir.

1 Q. Okay. And when he gave you
2 descriptions of his father being there at one
3 point in time on Page 11, he said he could see
4 that corner though, that he had to look over a
5 wall, and he could see a little bit.

6 And then on Page 34, he tells you
7 that he heard his father talking to Victor
8 Davis, and he said if you can it now, if he's
9 that far away, you believe that he's going to
10 be able to hear what his father is saying at
11 that time?

12 A. Now, it depends on how loud his
13 father is talking. Where he's parked the car,
14 from his description, is near what is in front
15 of the Findlay Market business offices which
16 would if the car is here, the incident is
17 happening here, he would probably be looking at
18 some angle if he's telling the truth about where
19 the car was parked. And from there you can
20 probably see where this happened. I think the
21 wall he's probably talking about in that
22 statement is the wall where he had the gun
23 hidden in the Brian Austin case in the shoe box.

24 Q. But what I'm saying, nobody else
25 told you that they heard anybody yell fuck it?

1 A. I believe, and this is simply from
2 talking to Jenny Luke and Terry McGuffey in
3 their case, they did have people in the
4 apartment building hear the argument or the
5 arguing which some believed near the entrance to
6 the building or in front of the building.

7 So, if people inside the apartment
8 building are hearing it through their walls, I'm
9 sure somebody sitting outside could hear an
10 argument.

11 Q. But you don't know what the people
12 inside the building said they heard?

13 A. Not specifically, no.

14 MR. WHALEN: Okay. Nothing else,
15 Your Honor.

16 MR. TIEGER: Nothing further.

17 THE COURT: You have something
18 else? Thank you. Thank you, Detective,
19 and thank you for being here today.

20 THE WITNESS: Thank you, ma'am.

21 THE COURT: Did you guys want to
22 hold this witness? Is he released?

23 MS. WILLIAMS: No, Your Honor.

24 MR. TIEGER: That's fine, Judge, we
25 don't --

1 (Witness excused.)

2 THE COURT: And now we're awaiting
3 another document. So we're in a resting
4 recess. He's here now. All right.
5 okay. We are going to take a -- we are
6 going to take a recess here.

7 Counsel, would you step over here?

8 (Unreported sidebar conference.)

9 THE COURT: All right, counsel.

10 MR. WHALEN: Your Honor, for the
11 record, I believe that a document has
12 been produced and given to the Court from
13 Kareem Gilbert's case. I believe the
14 Court unsealed that document and has made
15 copies of the document and then resealed
16 the original.

17 THE COURT: That is correct. It's
18 my understanding that the copy will be
19 marked as Defendant's Exhibit F and
20 stipulated into evidence? That's my
21 understanding, correct?

22 MR. TIEGER: That is right, Judge.

23 THE COURT: The agreement?

24 MR. TIEGER: Yes.

25 THE COURT: Is Defense Exhibit F.

1 MR. WHALEN: In that case, we will
2 offer exhibits -- Defense Exhibits A
3 through F.

4 THE COURT: Is there a stipulation?
5 You stipulated?

6 MR. TIEGER: Yes, Judge.

7 THE COURT: All right. So, the
8 Defense Exhibits A, B, C, D and F, he is
9 moving to admit them. Do you object to
10 any of them?

11 MR. TIEGER: You know what, maybe
12 if Mr. Whalen could remind me of what
13 they are. I think a couple have already
14 been admitted.

15 MR. WHALEN: Can we approach?

16 THE COURT: Yes. Go through the
17 exhibits, please. Okay.

18 MR. TIEGER: Judge, I have got -- I
19 don't have a problem with A, B, C or F.
20 D is the actual indictment, which I think
21 the Court would tell them, the jury, that
22 the indictment is not evidence in the
23 case, so I don't really --

24 THE COURT: Normally, we don't
25 submit the complaint or the indictment.

1 Did you want to submit that for some
2 reason?

3 MR. WHALEN: Yes. I want to submit
4 it because of the date on the back when
5 it shows it was issued.

6 THE COURT: Okay.

7 MR. TIEGER: Judge, I think we can
8 agree it was reported the 24th of May,
9 2010.

10 THE COURT: Do you want to
11 stipulate about that stipulation? Would
12 that serve the same purpose?

13 MR. WHALEN: Yes, that's fine.

14 THE COURT: So, what is that
15 stipulation again, that it was?

16 MR. TIEGER: 5/24 of 2010.

17 THE COURT: Will you incorporate
18 that into -- remind me. There will be a
19 point when I read jury instructions, and
20 I'll be reading stipulations, so you make
21 sure that that is so noted.

22 MR. TIEGER: Judge, and E is the
23 Kenneth Heard disc from February 11th.
24 My recollection is that when that was
25 played a number of times, that was where

1 they were trying to figure out if Mr.
2 Heard said 20 or 40.

3 MR. WHALEN: We withdrew that.

4 THE COURT: So, therefore, E is
5 withdrawn, correct?

6 MR. WHALEN: Yes.

7 THE COURT: So, therefore, we have
8 A, B, C and F.

9 MS. WILLIAMS: Correct.

10 THE COURT: Admitted as defense
11 exhibits. Four exhibits. All right.

12 (Defense Exhibits A, B, C and F
13 received into evidence.)

14 THE COURT: So, you rest at this
15 time? And my understanding is that the
16 attorneys would like to have the closing
17 arguments and jury instructions read
18 together. That's normally how it goes.
19 We have not concluded with what the jury
20 instructions should be completely,
21 correct?

22 MR. TIEGER: That is right.

23 THE COURT: Still in the process.
24 They have to be precise, and they may not
25 even agree what should be contained

1 therein, so we're gonna do that next.
2 So, for that reason, are we adjourning
3 for the day?

4 MS. SHANAHAN: We are.

5 THE COURT: Correct?

6 MR. WHALEN: Yes.

7 THE COURT: All sides agree. The
8 jury is adjourned for the day, and I have
9 read to you several times what the
10 admonition is. Do you think you remember
11 that?

12 JURY: Yes.

13 THE COURT: All parts contained
14 therein. You are adjourned for the day.
15 We are going to start Monday at 8:30.

16 MR. WHALEN: Yes.

17 THE COURT: Monday at 8:30, because
18 I have another one going on, and we want
19 to get your instructions and you can
20 begin to deliberate. So, thank you very
21 much for coming so far.

22 (The jury leaving the courtroom at
23 2:25 p.m.)

24 THE COURT: Did you say the defense
25 rests? We'll have to say that when we

1 come in on Monday. The defendant rests,
2 and then would you remind me?

3 MR. TIEGER: Yes, Judge.

4 THE COURT: Thank you. Is there
5 anything else, Counsel?

6 MR. TIEGER: Judge, we would have
7 no rebuttal.

8 THE COURT: No rebuttal?

9 MR. TIEGER: We are ready to go
10 straight into closing.

11 THE COURT: Okay. I probably could
12 have done that today, but --

13 MR. TIEGER: Yeah, I think so. If
14 only they said the defense rests, but
15 they didn't, so --

16 THE COURT: It's their fault.

17 MR. TIEGER: We'll call surprise
18 witnesses on Monday.

19 (Continued in progress until
20 January 24, 2011.)

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